Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

ROBERT L. KLOPP,
PETITIONER,

V.

UNITED STATES OF AMERICA; ADMINISTRATIVE OFC, US COURTS; KEVIN F. ROWE, Clerk, USDC, I/O; PATRICIA A. ZIELINSKI, Deputy Clerk, USDC, I/O; GEORGE LANGE, III, Clerk, USCA, I/O; CAROLYN CLARK CAMPBELL, Chief Deputy Clerk, USCA, I/O; CYNTHIA NELSON, Deputy Clerk, USCA, I/O; WILLIAM R. SUTER, Clerk, Supreme Court of the U.S., I/O,

AND

UNITED STATES OF AMERICA; ADMINISTRATIVE OFC, US COURTS; KEVIN F. ROWE, Clerk, USDC, I/O; ALICE F. MENTZ, Deputy Clerk, USDC, I/O; CASSANDRA WARREN, Deputy Clerk, USDC, I/O; D. WATTS, Deputy Clerk, USDC, I/O; GEORGE LANGE III, Clerk, USCA, I/O; CYNTHIA NELSON, Deputy Clerk, USCA, I/O; SAMUEL MCLAMORE, Case Manager, USCA, I/O,

RESPONDENTS.

Petition For Writ of Certiorari
To The United States Court of Appeals
For the Second Circuit

# PETITION FOR WRIT OF CERTIORARI

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80 PP

## QUESTION(S) PRESENTED FOR REVIEW

1. Does the Second Circuit Court of Appeal's use of Local Rule section 0.23, by the CLERK, to summarily affirm lower district court rulings made under Rule 12, F.R.C.P., without the Appellate Court's approval, with denials of Petitions for Rehearing being made by an Administrative Attorney, result in NON-RULINGS, or "VOID JUDGMENTS", reversable and correctable by this Court under certiorari?

2. Has the "extra judicial" errors and negligence by additional employees of the Administrative Office of the U.S. Courts during the proceedings below and in the Appellate Court, resulting in further obstruction of justice, and causing involuntary dismissal by the Clerk's Office in the 2nd Circuit Court of Appeals, constitute prejudicial error, requiring rehearing and review of the original cause of action?

3. Can the Supreme Court's Supervisorary Power be invoked to correct the errors below by granting certiorari and reviewing the cases below that were incorrectly dismissed in District Court under supposed "immunity" of employees of the Administrative Office of the U.S. Courts, whose job duties and responsibilities are clearly defined by law and who have no immunity in their personal capacities under "Bivens"?

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## OPINIONS BELOW

The unpublished Summary Order date stamped, DEC 17, 1997, signed by Lucille Carr, Deputy Clerk, for George Lange III, Clerk, from the Second Circuit Court of Appeals, case no. 97-6118 and case no. 97-6148, is found at A-1, this Petition. This SUMMARY ORDER combined both cases below, from District Courts, case no. 396 CV 593 RNC and 396 CV 643 AVC. Mr. Klopp notes here that he has also combined them, under Supreme Court Rule 12.4. The unpublished "Ruling on Motion to Dismiss", by Judge Robert N. Chatigny, of the United States District Court, District of Connecticut, case no. 396 CV 593 RNC, dismissed on March 27, 1997, docket no. 34, is found at A- 6, this Petition. The unpublished "Ruling on Defendant's Motion to Dismiss" by Judge Covello, District Court Connecticut, case no.396 CV 643 AVC, filed on Feb.12, 1997, docket no.21, is found at A-11, this Petition.

Mr. Klopp originated SF-95 and Administrative Complaint with The Administrative Office of the U.S. Courts, General Counsel, on October 25, 1995, under the jurisdiction found in Administrative Complaint, Appendix to Complaint, District Court, case no. 396 CV 593 RNC. Mr. Klopp received Formal Denial from John L. Chastin, the Administrative Office of the U.S. Courts, on 2-13-1996 at A-21, this Petition. Mr. Klopp's second Administrative Complaint was filed with the Administrative Office of the U.S. Courts on November 20, 1995, as given in District Court case no. 396 CV 643 AVC. Mr. Chastin issued his "Formal Denial" of this second claim on April 3, 1996 at A-22, this Petition.

## JURISDICTION

The date on which the United States Court of Appeals for the Second Circuit entered its SUMMARY ORDER was on December 17, 1997. A timely Petition for Rehearing was filed on December 26, 1997, for both cases. Mr. Klopp's Petitions For Rehearing were both denied by

Beth J. Meador, Administrative Attorney, on February 3, 1998, and are found at A-23 and A-24, this Petition. The Mandates were filed, with date "ISSUED AS MANDATE: 2/17/98 N.G.", as found at A-25 and A-26, this Petition.

The jurisdiction of this Court is invoked under 28 U.S.C.A., section 1254(1), under Rule 10(a) Supreme Court Rules, under 28 U.S.C.section 2072, under 28 U.S.C. section 2106, and under the United States Constitution.

The U.S. Court of Appeals for the Second Circuit had jurisdiction under 28 USC section 1291, to review the Record on Appeal from both decisions in the U.S. District Court, New Haven, Connecticut. (See Appellant's Brief, U.S.C.O.A.2nd.Cir., both cases, section 2.iii, pp.3,4, for the Appellate Court Jurisdiction as being under 28 USC 1291.)

Original Jurisdiction in District Court was given in Appellant's Brief, U.S. Court of Appeals for the Second Circuit, for both cases, at section 2.i, pp.1,2, as being under the Federal Tort Claims Act, or, alternately, under the U.S. Constitution as a "Bivens", and as previously briefed in District Court.

## STATUTORY PROVISIONS INVOLVED

1. Rule 47., F.R.A.P. Rules of a Court of Appeals.
   (a) Local Rules, (1) "Each Court of Appeals ... may...make and ammend rules governing its practice."
   "A local rule shall be consistent with...rules adopted under 28 USC section 2072...."
   (See, also, Rule 47, F.R.A.P.,at A-50, this Petition.)

2. Local Rule 0.23, CA-Second Circuit.
   "...in those cases in which decision is unanimous and each judge of the panel believes that no juris prudential purpose would be served by a written opinion, disposition will be made.by summary order." Where disposition is by summary order, the court may append a briefwritten statement to that order.

Since these statements do not constitute formal opinions of the court, and are unreported or not iniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before this or any other court."
(See, also, Local Rule 0.23, F.R.A.P., at A-50, this Petition.)

3. 28 U.S.C. § 2072. Rules of Procedure and Evidence, Power to Proscribe.
(a)"The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in United States district courts and courts of appeals."
(b)"Such rules shall not abridge, enlarge or modify any substantive right."
(See, also, 28 U.S.C. § 2072, at A-51, this Petition.)

4. 28 U.S.C. § 2106. Determination.
"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."
(See, also, 28 U.S.C. § 2106, at A-5, this Petition.)

## STATEMENT OF THE CASE

### A. BACKGROUND.

This section starts with two of Mr. Klopp's Administrative Complaints filed on October 25, 1995, and on November 20, 1995, with the Administrative Office of the U.S. Courts, under the Federal Tort Claims Act, for the willful negligence caused by defendants in the processing and handling of Mr. Klopp's previous civil suits, through the federal courts in previous case, that caused Mr. Klopp economic damage, previous expense of litigation and associated on-going costs.

John L. Chastin, Assistant General Counsel, Administrative Office of the U.S. Courts, issued "Formal Denials", as given in A-21 and A-22, this Petition.

Mr. Klopp filed two Complaints, filed as docket no.2, with accompanying Appendix, in District Court, on 4/2/96 and on 4/10/96, under the Federal Tort Claims Act, or, alternately, under the Fifth Amendment, as a "Bivens" claim, to recover costs and damages. These were both docketed as given below.

### B. PRETRIAL PROCEEDINGS.

#### CASE NO. 396 CV 593 RNC:

The relevant events since the filing of the case on 4/2/1996, case no.396 CV 593 RNC, in District Court, and as given in the docket proceedings, at A-32, is given here:

1. Summons and Service of Process was made by U.S. Marshalls for defendants, as given on p.3, docket sheets, at A-32, for the defendants listed and given in the Complaint, docket no.2.

2. Defendant U.S.A., filed Motion to Dismiss, docket no.13, on 6/10/96. Defendant U.S.A. has not answered the original complaint. Supposed immunity from suit is incorrectly claimed.

3. Mr. Klopp's Corrected Response is given in docket no.20, followed with his Motion and Memorandum for

Default Judgment Against Defendant USA, on 12/20/96, docket no's.30 and 31, respectively, for defendant's improper defense.

4. The Ruling, docket no.34, (pp.5-10, Appendix to Appellant's Brief) at A-6, this Petition, incorrectly granted Defendant U.S.A.'s Motion to Dismiss on March 2, 1997 and the case was erroneously dismissed with no basis in law.

5. The "JUDGMENT", docket no.35, was issued by the Clerk's Office on March 2, 1997. (See p.4, Appendix to Appellant's Brief.)

6. Mr. Klopp filed timely Motion to Amend, docket no.36, on 4/4/1997, with accompanying Memorandum, docket no.37, pointing out that the defendants' job duties and responsibilities are succinctly spelled out by law.

7. The Endorsement by Judge Chatigny, denying Motion to Amend (36-1) on 5/2/1997, with left hand margin notation, terminated the action in District Court. (See p.3, Appendix to Appellant's Brief.)

8. Mr. Klopp filed timely Notice of Appeal, docket no.39, pp.1,2, Appendix to Appellant's Brief, specifying the contents of the Record on Appeal, and paid the required filing fees on 5/12/1997.

9. Mr. Klopp filed Appearance and Service Affidavit to the U.S. Court of Appeals for the Second Circuit on 5/16/1997, as required under Rule 4(a)(7), F.R.A.P., and sent copies to defendant counsel, as required under Rule 3(d), R.F.A.P.

CASE NO. 396 CV 643 AVC:

The relevant events since the filing of the case on 4/11/96, case no. 396 CV 643 AVC, in District Court, and as given in the docket proceedings, at A-38, this Petition, is given here:

1. Summons and Service of Process was made by U.S. Marshals for defendants, as given in the Complaint, as found on docket sheets, p.3, at A-38.

2. Defendant U.S.A. filed Motion to Dismiss, docket no. 10, on 6/21/96. Defendant U.S.A. has not answered the original complaint. Supposed immunity is claimed.

3. Mr. Klopp filed Memorandum in Opposition to defendant USA's Motion to Dismiss, docket no.13, on June 28, 1996, pointing out, explicitely, the errors of fact and law requiring correction.

4. Along with above Memorandum in Opposition, Mr. Klopp also filed Motion to Strike, docket no.12, that gave appropriate case law and references required to strike those portions of defendant USA's Motion and Memorandum, docket no's. 10 and 11.

5. Mr. Klopp noted that the limited discovery available and in dispute with defendant counsel, was creating a conflict, requiring the court's attention.

6. On July 17, 1996, Mr. Klopp filed Motion for Disposition of Defendant USA's Motion to Dismiss, docket no.14, and accompanying memorandum, docket no.15.

7. Mr. Klopp's Notice of and Motion for Disposition, docket no.14, was misfiled on 7/18/96, as "request for Hearing", instead. See p.4, docket sheets, as part of Document "A", INDEX, and p.22, Appendix to Appellant's Brief.

8. Att. Daily submitted Defendants version of the Report of Parties Planning Meeting, as docket no.16, on 7/25/1996.

9. Also on 7/25/96, the Endorsement, denying (14-1) Motion for Disposition, was docketed, with rubber stamp facsimile of Judge Covello. See p.21, Appendix to Appellant's brief.

10. Without recourse, Mr. Klopp submitted Request for Assignment of Case For Trial, docket no.17, with reasons for request to be found on p.20, Appendix to Appellant's Brief.

11. The Endorsement denying (17-1) Motion for Assignment, was filed on 8/2/96, with rubber stamp facsimile of Judge Covello. See p.20, Appendix to Appellant's Brief.

12. Mr. Klopp noted that the discovery cutoff, given in Order on Pretrial Deadlines, had passed. Mr. Klopp assumed that the pleadings were closed.

13. Mr. Klopp filed Motion and accompanying Memorandum for Judgment on the Pleadings Against Defendant USA's Failure to State a Legal Defense, docket no's. 18 and 19, respectively, on December 18, 1996.

14. The Endorsement denying (18) Motion for judgment on the Pleadings, as "Moot", p.18, Appendix to Appellant's Brief, with rubber stamp facsimile of Judge Covello, was entered on 2/10/97.

15. Also on 2/10/97, the Endorsement, denying (12) Motion to Strike, was entered, with rubber stamp facsimile of Judge Covello. See p.19, Appendix to Appellant's Brief.

16. Judge Covello signed p.13, of Ruling, docket no.21, granting Motion to Dismiss on 10 February 97, A-20.

17. Mr. Klopp filed Motion to Alter or Amend Ruling, docket no.23, with accompanying Memorandum, docket no.24, on February 19, 1997, within the ten days authorized under Rule 59, F.R.C.P., pointing out those same errors of fact and law previously proffered by Att. Daily in his erroneous memorandum, docket no.11. (See pp.30-41, Appendix to Appellant's Brief.)

18. The Endorsement denying Motion to Alter or Amend (23) was entered as being "granted", with "relief requested denied", and was rubber stamped with facsimile of Judge Covello on 5/13/97, as found on p.2, Appendix to Appellant's Brief.

19. The JUDGMENT, docket no.22, pp.3,4., Appendix to Appellant's Brief, was issued by the Clerk's Office on February 12, 1997.

20. Endorsements for Judge Covello were filed on 2/10/1997, denying as moot docket no.18, Motion For Judgment on the Pleadings, and denying Motion to Strike, docket no.12. (See pp.18,19, respectively, Appendix to Appellant's Brief, for copies of Endorsements.)

21. Mr. Klopp filed timely Notice of Appeal, docket no.25, p.1, Appendix to Appellant's Brief, and paid the

required filing fees on 5/29/1997.

22. Mr. Klopp filed Appearance and Service Affidavit to the U.S. Court of Appeals for the Second Circuit on 5/22/1997, as required under Rule 4(a)(7), F.R.A.P., and sent copies to defendant counsel, as required under Rule 3(d), F.R.A.P.

C. SECOND CIRCUIT COURT OF APPEALS EVENTS.

The events in the Second Circuit Court of Appeals can be found in the certified copies of the docket sheets at A-27 and A-29, this Petition, and as given below:

CASE NO. 97-6118 (396 cv 593 RNC):

1. The case was docketed in the Second Circuit, on 5/16/97, case no. 97-6118.

2. Mr. Klopp's Appellant's Brief and accompanying Appendix, were filed in the Second Circuit on 6/10/97. (See pp.6,7, Appellant's Brief, section 4.i. Facts Relevant to the Issues Presented, and pp.8-25, section 5.ARGUMENT, ISSUES 1 through 5, as being preserved for review here on writ of certiorari to this court.)

3. Defendant U.S.A. submitted Memorandum Brief on 7/31/97.

4. Mr. Klopp submitted Response in Opposition on 8/11/97.

5. On 10/22/97, the second Scheduling Order was filed, with proposed argument for week of 12/8/97.

6. On November 21, 1997, Mr. Klopp received "Notice of Hearing Date" of Friday, December 12, 1997, to be "On submission without oral argument". Mr. Klopp acknowledged and returned signed copy of "Notice" on Nov.22, 1997.

7. The Summary Order, at A-1, this Petition, was issued on 12/17/97, signed by Deputy Clerk Lucille Carr, and incorrectly affirmed the decision below of Judge Chatigny and without consent of the "court", while also incorrectly combining this and another similar case, both of

which fail the "material facts test" and "de novo" review requirements of this court.

8. Mr. Klopp filed timely Petiton for Rehearing on 12/26/97, under Rule 40, F.R.A.P., pointing out that the erroroneous legal standard below and as given in the Summary Order, are not shielded even now, and violate Mr. Klopp's due process rights.

9. The Petition for Rehearing was incorrectly denied on 2/3/98, by Beth J. Meador, Administrative Attorney, at A-23, this Petition, and not by the court, as required.

10. The Mandate was issued on 2/17/98, at A-25, this Petition, along with the Mandate for case no. 97-6148, with both being incorrectly docketed by Hartford as dockets no's. 41 and 42, case no. 396 CV 593 RNC, or 97-6118, 2nd Circuit.

CASE NO. 97-6148 (396 cv 643 AVC):

1. This case was docketed on 5-27-97, as case no. 97-6148.(See A-29 for docket transactions.)

2. Appellant's Brief and accompanying Appendix, were filed on June 19, 1997 in the Second Circuit. (See pp.7,8, Appellant's Brief, section 4.i. FACTS RELEVANT TO ISSUES PRESENTED, and pp.10-26, section 5.ARGUMENT, ISSUES 1. through 5, as being preserved for review here on writ of certiorari to this court.)

3. Defendant U.S.A. submitted Memorandum Brief on 8/18/97.

4. Mr. Klopp filed Reply Brief on 8/25/97.

5. On 12/2/97, the second Scheduling Order was filed, with proposed date for argument for week of 12/12/97.

6. On Dec. 12, 1997, a "Notice of Hearing Date" was mailed to Mr. Klopp, for December 12, 1997, with "NO TIME ALLOTTED ORAL ARGUMENT: THIS APPEAL WILL BE TAKEN "ON SUBMISSION".

7. The Summary Order, at A-1, this Petition, was issued on 12/17/97, signed by Deputy Clerk Lucille Carr, and incorrectly affirmed the decision below of Judge

Chatigny and without consent of the "court", while also incorrectly combining this and another similar case, both of which fail the "material facts test" and "de novo" review requirements of this court.

8. Mr. Klopp filed timely Petiton for Rehearing on 12/26/97, under Rule 40, F.R.A.P., pointing out that the erroroneous legal standard below and as given in the Summary Order, are not shielded even now, and violate Mr. Klopp's due process rights.

9. The Petition for Rehearing was incorrectly denied on 2/3/98, by Beth J. Meador, Administrative Attorney, at A-24, this Petition, and not by the court, as required.

10. The Mandate was issued on 2/17/98, at A-26, this Petition, along with the Mandate for case no. 97-6118. It is not known what the Hartford Office, District Court intends to do with their files. (See A-44.)

The chronology of these two cases, above, up to this point, is only summarized above, with the issues given below in sections on REASONS FOR GRANTING WRIT. Mr. Klopp does not waive any of the issues below, on appeal to the Second Circuit, by not explicitely raising them again in this Petition, but rather summarizes them, here, with final argument to be given, as required in Mr. Klopp's Brief on the Merits, and at oral argument, if required, after first granting this Petition.

D. STANDING.

Mr. Klopp continues to be aggrieved by the decisions of the courts below and is being deprived of his Constitutional right of petition, right of access to the courts, right of due process and right of a fair and impartial tribunal of competent jurisdiction, causing him to suffer damage, and physical and emotional pain because of this, and, that, together with the costs from all defendants, form a continuing cause of action giving Mr. Klopp a sufficient interest in property and reputation in persuing this.

Now comes Mr. Klopp, Plaintiff-Appellant, from Dismissal of case no's. 97-6118 and 97-6148, in the Second Circuit, with denial of Petitions to Rehear, and earlier Summary Affirmance in Second Circuit, of Case no. 396 CV 593 RNC and 396 643 AVC, in District Court, Connecticut, with the following reasons for granting writ of certiorari from above dismissal, as follows below:

## REASONS FOR GRANTING WRIT

1. There were errors below that require correction. Those errors are blatant and given in Mr. Klopp's Motions to Strike, Memorandums in Opposition, Motions and Memorandum for Judgment on the Pleadings, Motions and Memorandum to Correct Pleadings, Mr. Klopp's Appellate Briefs, Reply Memo Briefs and Formal Complaints to the F.B.I., as found and documented in proceedings below.

In the "FORMAL COMPLAINT" to the F.B.I. on March 9, 1998, at A-45, this Petition, Mr. Klopp points out how his appellate cases were incorrectly dismissed by Second Circuit "clerks" and others. Then, see Mr. Klopp's "Petitions for Rehearing" where Mr. Klopp gives five (5) specific reasons for returning these two cases to the "COURT" to be heard. When Mr. Klopp's Petition for Rehearing was, also, "denied", any possible "neglect" was converted to either a type of "FRAUD on the COURT", or, "obstruction of justice".

Mr. Klopp could not ask for a new trial below since none had been held yet. The "extra judicial" events were documented and also found in Appellant's Brief as part of the "on-going" bias against Mr. Klopp in the proceedings. See section 4.i, pp.6,7, Appellant's Brief, case no. 97-6118, where "(a). Summons and Service of Process was interfered with by Court personnel, (b). unauthorized Notice and tranfer of case was made by Clerk, and "(g)."ex parte" memo and copy of another case sent from Att. Daily to Court. These and the other examples are then given in ISSUE 4 and ISSUE 5, pp.19-25, Appellant's Brief, as reasons for appeal, itself. See case no. 97-6148, also, at

p.21, ISSUE 4, where Mr. Klopp asks if the "False defense used by defendant counsel violate the Rules of Professional Conduct" and ISSUE 5, at p.24, where Mr. Klopp asks for sanctions against these and previous U.S. Court employees, for their malicious abuse of process and false defenses.

The District Court failed to correct its errors as asked for by Mr. Klopp in his Memorandum in Support of Motion for Reconsideration, docket no.37, as given on pp.31-50, Appendix to Appellant's Complaint, USCOA2nd Circuit, case no. 97-6118, Klopp v. U.S., and in case no. 97-6148 at pp.46-84, Appendix to Appellant's Brief. Those errors are preserved for appellate review and for review "de novo" by this court, or, on remand.

The court's improper copying of legally unsupported and incorrect views of law has been made in the clear absence of all jurisdiction, and, knowingly, constitutes an abuse of process. See Jennings v. Shuman, 567 F.2nd at 1218; Rhodes v. Houston, 202 F.Supp. at 630; U.S. v. Molte, 251 F.Supp. at 600, and Restatement of the Law, Torts, Second, Chapter 31, section 682 ABUSE OF PROCESS. See Wojculewicz v. Cummings, 143 Conn.624 at 632, where the guarantee of a fair trial, conducted in substantial conformity to law, is guaranteed.

The "Summary Order" and those decisions below are not shielded from review of constitutional issues raised after dismisal below, or after an appeal has been taken. See State v. Miller, 192 Conn.532, 535-6, note 5 at 535.

It's up to the Supreme Court now to correct the jurisdictional and procedural errors below that gave rise to new constitutional issues, as part of a continuing cause of action, and to use its supervisory powers under 28 USC section 2106 to accomplish this, while giving proper instructions for prospective use of this process. See Supreme Court Practice, Stern, Gressman & Shapiro (6th Ed. 1986), section 4.17, pp.221-224, for discussion and cases cited.) See Lawrence on Behalf of Lawrence v. Carter, 116 S.Ct.604(1996), for discussion of granting

plenary review and then granting certiorari, vacating, and remanding (GVR) under section 2106.

Then, see Standard Oil of Calif. v. U.S. 424 U.S. 17; Harduvel v. General Dynamics Corp. 801 F.Supp. 601; and Cooter & Gel v. Hartmax 496 U.S. at 405.

See, also, McCray v. State of Maryland, 456 F.2nd 1 (1972), as briefed below, and, as given in original Administrative Complaint, as well as in Complaint, docket no.2, District Court. See, also, California Motor Transport Co. v. Trucking Unlimited 404 U.S. 508.

Mr. Klopp's Appellate Court "Petitions for Rehearing" gives the location of these "errors" as being found in his "Appellant's Brief", Response and Reply Memos, his original Complaints, as well as in his "Petition for Rehearing", itself.

The Court can grant certiorari to correct errors. See Supreme Court Practice, by Stern, Gressman & Shapiro (6th.Ed. 1986), section 4.17, pp.221-223, Erroneousness of Decision Below. Once reversed, the issues, as given in Appellant's Briefs below, can be decided on the merits by a straight forward application of controlling precedent. See Thigpen v. Roberts 468 U.S. 27 at 32,33. This court has supervisory power over the judgments of the lower federal courts. U.S.v.Munsingwear 340 U.S.36 at 40, and House v.Mayo 324 U.S. 42.

2. The Summary Disposition by the Panel is in direct conflict with the Tenth Circuit Court of Appeals ruling in U.S. v. Stemm, 835 F.2nd 732 (10th.Cir.1987), where the panel decision there was "returned to the calendar for full briefing and determination on the merits." because it was not based upon the entire record below, as required. See, also, Terrel v. Morris, 493 U.S. 1 at 2-3, where:

> "The Sixth Circuit disposed of Terell's pro se appeal in a per curiam, unpublished opinion. Terell v. Marshall, 872 F.2nd 1029 (1989)(judgment order). ... The Sixth Circuit, by its unpublished opinion, affirmed a decision that the District Court never made, and so never reviewed that court's actual

> decision. Accordingly, the motion for leave to proceed in forma pauperis and the petition for certiorari are granted. The judgment of the Court of Appeals is vacated, and the case remanded to that court for further proceedings consistent with this opinion."

It is not known what was considered by the Panel in this case at bar, if anything. The notation on the docket sheets for 12/12/97, at p.5, A-28 and A-31, show that:

> "Case submitted before ALTIMARI*, WALKER, CABRANES, C.JJ., Please note: FXA was not present during today's oral arguments. He will listen to the oral argument tapes. (TAPE No.___) (ca91)"

While it is true that "Two judges shall constitute a quorum", under Local Rule 0.14 Quorum, disposition by summary order must be made unanimously, as given in Local Rule 0.23 Disposition...by Summary Order.

The "SUMMARY ORDER" at A-1, this Petition, was not dated nor signed by any of the three panel judges, but was date stamped as "Received" on DEC 17 1997.

A request to the Clerk's Office, after a personal review of the Court of Appeals file and other files at the Second Circuit on February 10, 1998, has not been answered. (See Exhibit "E", "Memo from Mr. Klopp to Clerk, Feb.11, 1998, Case no.97-6118", as part of FORMAL COMPLAINT to F.B.I. on March 9, 1998.) It is still not known who attended the session on 12/12/97, what was said, and what was declared by the "COURT", if anything.

The "SUMMARY ORDER" signed by Lucille Carr is part of that FORMAL COMPLAINT to the F.B.I. included here as A-45, this Petition.

The only thing considered in the "SUMMARY ORDER" by Lucille Carr, is the "Ruling on Motion to Dismiss", docket no.34, at A-6. This "SUMMARY ORDER" fails to consider the entire case, as found in the record on appeal, and as briefed by Mr. Klopp.

This is another example of possible "Fraud on the Court", as briefed by Mr. Klopp, again, in his Petitions for Rehearing on December 23, 1997. Mr. Klopp's right of appeal, under 28 U.S.C. 1291, has been denied. Mr. Klopp's right of access and right to be heard by an impartial tribunal of competent jurisdiction have been denied. Mr. Klopp's substantive and due process rights have been prejudiced. See, generally, Judgments, Second, sections 70, 71.g., and 19 ALR Fed.761, Judgments-Relief-Fraud on Court. See, also, Employers Ins. of Wausau v. Browner, 848 F.Supp. 1369 at 1377 (N.D.Ill.1994). See, also, Mathews v. Eldridge, 424 U.S. 319, for definitions of due process. See, also, Davis v. Passman, 442 U.S. 228, 245-248, for a "Bivens" action on due process grounds, as cited in Vennes v. An Unknown Number of Unidentified Agents, 26 F.3d.1448 (8th.Cir.1994).

Mr. Klopp has not been heard yet by a court of competent jurisdiction and his rights have been prejudiced by the biased and bad faith handling of his cases through the federal courts. This prejudicial error, below, allows for rehearing and review of the original cause of action, itself, by this court, or, on remand, by the appellate court. See O'Rear v. Fruehauf Corp., 554 F.2nd 1304, 1309 (5th.Cir.1979), for prejudice resulting from improper argument, and Hall v. Freese, 735 F.2nd 956, 961 (5th.Cir.1984). See Gibson v. Berryhill, 411 U.S. 564; Garden State Bar Ass'n v. Middlesex Cty.Ethics, 643 F.2nd 119 (1981); Drombrowski v. Pfister, 380 U.S. 479; Wood v. Strickland 420 U.S. 308; and Browning v. Navarro, 887 F.2nd 553 (5th Cir.1989).

The Court, under its supervisory power, can also vacate and hear the original case, and, therefore resolve similar jurisdictional and procedural issues caused by the "informal Summary Order process" improperly utilized below in this case at bar. See Stern, Gressman & Shapiro (6th.Ed.1986), section 4.15, pp.220, 221, "where the federal appellate decision "has so far departed from the accepted and usual course of judicial proceedings, or so far

sanctioned such a course by a lower court, as to call for an exercise of this Court's power of supervision."

3. The supposed Summary Disposition, under Local Rule 0.23 CA-Second Circuit, by the panel, does not "represent (a) reasoned exercise of the courts authority" required by the Supreme Court, as given in Ortega-Rodriguez v. U.S. ___U.S.___, 113 S.Ct.1199 (1993) at 1205, and is in direct conflict with requirement of Rule 47(a)(1), F.R.A.P., that the local rules be consistent with 28 U.S.C. section 2072. See footnote 15, p.1206, Ortega-Rodriguez, where Rule 47, F.R.A.P. limits that authority to rules "governing (the) practice before those courts" and not inconsistant with the the Rules of Appellate Procedure, themself, nor in violation of the Constitution or Congressional statutes, and reasonable in light of the concerns they are to address. See, also, Thomas v. Arn, 474 U.S. 140 at 146-147. (See A-50, this Petition, for Rule 47, F.R.A.P.)

The supposed Summary disposition by the panel under Local Rule 0.23 CA-Second Circuit, would be in direct conflict with Rule 47, F.R.A.P., to regulate their practice in any manner inconsistent with legislation and appellate rules. (See A-50, this Petition, for Local Rule 0.23.) See Burns v. United States R.R. Retirement Bd., 701 F.2nd 189 at 191, (1983).

The supposed summary disposition by the panel would be directly at odds with published, settled, law given as Standards for Review, on Summary Judgment issues by the Supreme Court, in previous decisions. See Celotex Corp. v. Catrett, 477 U.S. 317 at 322-323, where the Supreme Court found the position of the Court of Appeals (in Celotex)

> "inconsistant with the standard for _____ set forth in _____ of the Federal Rules of Civil procedure... since a complete failure of proof concerning an essential element of the non-moving parties case necessarily renders all other facts immaterial (and, the plaintiff-appellant, Mr. Klopp) is entitled to a judgment as a matter of law...."

The District Court's Standards, besides being erroneous, and reviewable on appeal, were also based on false statements, and must be set aside. See Cord v. Smith, 370 F.2nd 425 (1966); Hazel-Atlas Glass Co. v. Hartford Empire Co., 1944, 322 U.S. 238; Root Refining Co. v. Universal Oil Products Co., 169 F.2nd 514.

The supposed Summary disposition by the panel would violate Mr. Klopp's right to be heard by a tribunal of competent jurisdiction. The supposed panel's decision would not be that of a impartial panel. See Wigmore on Evidence, 3rd.Ed.Vol.3, section 949, p.502, where "the pendency of civil litigation between the witness and the opponent is usually relevant....U.S. v. Cohen, 163 F.2nd at 669."

Mr. Klopp has already been prejudiced in this case as well, with Mr. Klopp having cited O'Rear v. Freuhauf Corp., and Hall v. Freese, above, this Petition, p.15, as well as other cases where plaintiff's rights were prejudiced also.

Verbatim adoption of defendant USA's incorrect arguments, as given below, in both the District Court and Appellate Court, are also on the record. See "Standards of Review Primer", 125 FRD 329, 330, for appropriate review of false and fraudulent proposed "findings" submitted by defendant USA, and used by the court in Ruling, docket no.34, at A-6, this Petition. The Courts, below, have ignored completely the "material facts test" to be used in this case. The panel did not conduct a review "de novo" as required in summary judgment cases on appeal, allowing the fraudulent "facts" to stand, thus, prejudicing Mr. Klopp's rights further, and as given below.

The supposed Summary Disposition by the panel, would, also, fail the "material facts test" and "de novo" review requirements, as given by published review standards. See U.S. v. Chandler, 752 F.2nd 1148 (1985), where "a materiality determination is subject to complete review on appeal and is not controlled by the clearly erroneous standard. Lichenstein, 610 F.2nd at 1278."

"A statement is material...if it has a "natural

> tendency to influence, or be capable of affecting or Influencing" a function entrusted to a governmental agency." U.S. v. McGough, 510 F.2nd 598, 602 (1975)."
>
> "...a materiality determination is subject to de novo review on appeal. Chandler, 752 F.2nd at 451." as quoted from U.S. v. Steele, 933 F.2nd 1313 (6th.Cir.1991)."

With both the U.S. Court employees being involved and also as defendants, and with the judgment, itself, being appealable, the U.S.Attorney and F.B.I. can not ignore Mr. Klopp's complaints. See U.S. v. D'Amato, 507 F.2nd (1974) at 29.

Mr. Klopp also cites "Summary Judgment Under the Federal Rules: Defining General Issues of Material Fact", by William W. Schwagzer, 99 FRD 465.

Sanctions against defendant counsel, including a U.S. Attorney, are applicable. "When the U.S. comes into court as a party in a civil suit, it is subject to Federal Rules of Civil Procedure, as any other litigant." Mattingly v. U.S., 939 F.2nd 816 (9th.Cir.1994). See, also, U.S. v. National Medical Enterprises, Inc., 792 F.2nd 906 (9th.Cir.1986); and U.S. v. Gavilan Joint Community College Dist., 849 F.2nd 1246 (9th Cir.1988) at 1251.

Mr. Klopp has requested this relief, below, during his appeal, with the F.B.I., and, again, now.

Mr. Klopp's due process right to be heard by a court of competent jurisdiction are being denied, and Mr. Klopp is being denied access to the court to present his claims. Mr. Klopp's procedural due process rights have been violated, and Mr. Klopp continues to suffer because of this, and therefore, has standing. See Sutton v. U.S.,116 S.Ct.611 (1996), where the court explained why it has "has the power to remand to a federal court any case raising a federal issue which is properly before us in our appellate capacity."

On January 8, 1996, the Court also decided, in Lawrence on Behalf of Lawrence v. Chater, 116 S.Ct.604

(1996), that:

> "When intervening developments, or recent developments that Supreme Court has reason to believe the court below did not fully consider, reveal reasonable probability that the decision below rests upon a premise that court would reject if given the opportunity for further consideration, and where it appears that redetermination may determine the ultimate outcome of the litigation, order which grants certiorari, vacates, and remands (GVR) is.. appropriate."

The Record on Appeal to the Second Circuit, case no.97-6118 and case no. 97-6148, are complete in that Mr. Klopp has carried forward all issues below, on appeal, in both cases. The issues below can therefore also be decided here. The Supreme Court has the authority and must decide the issues raised and preserved on appeal.

CONCLUSION:

For the reasons set forth above, the Court should grant the Petition for Writ of Certiorari, and summarily reverse the judgments below, with final review of the original cause of action, on the merits, from the record, or remand to the Second Circuit for them to do their job.

This is to certify, under penalty of perjury, that the above Petition for Writ of Certiorari is true and correct, as stated above.(28 USC 1746.)

Respectfully submitted, Robert L. Klopp

Robert L. Klopp (pro se)
645 Grand Avenue
P.O.Box 599
New Haven, CT 06503-0599
(203) 562-8122

Subscribed and sworn to before me
this 15 day of May 1998
Notary Terry L. Malcom
My commission expires:

TERRY L. MALCOM
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 30, 2003

No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

ROBERT L. KLOPP,
PETITIONER,

V.

UNITED STATES OF AMERICA; ADMINISTRATIVE OFC, US COURTS; KEVIN F. ROWE, Clerk, USDC, I/O; PATRICIA A. ZIELINSKI, Deputy Clerk, USDC, I/O; GEORGE LANGE, III, Clerk, USCA, I/O; CAROLYN CLARK CAMPBELL, Chief Deputy Clerk, USCA, I/O; CYNTHIA NELSON, Deputy Clerk, USCA, I/O; WILLIAM R. SUTER, Clerk, Supreme Court of the U.S., I/O,

AND

UNITED STATES OF AMERICA; ADMINISTRATIVE OFC, US COURTS; KEVIN F. ROWE, Clerk, USDC, I/O; ALICE F. MENTZ, Deputy Clerk, USDC, I/O; CASSANDRA WARREN, Deputy Clerk, USDC, I/O; D. WATTS, Deputy Clerk, USDC, I/O; GEORGE LANGE III, Clerk, USCA, I/O; CYNTHIA NELSON, Deputy Clerk, USCA, I/O; SAMUEL MCLAMORE, Case Manager, USCA, I/O,

RESPONDENTS.

Petition For Writ of Certiorari
To The United States Court of Appeals
For the Second Circuit

**APPENDIX**

Robert L. Klopp (Pro Se)
645 Grand Avenue
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New Haven, CT 06503-0599
(203)562-8122

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT NAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of December, one thousand nine hundred and ninty-seven.

Present: Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

Circuit Judges

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ROBERT L. KLOPP,
Plaintiff-Appellant,

V. Nos. 97-6118
97-6148

UNITED STATES OF AMERICA, ET.AL.,
Defendants-Appellees.

---

APPEARING FOR APPELLEES: Thomas V. Daily
Assistant United States Att.
U.S. Atty's Office for the
District of Connecticut

APPEARING FOR APPELLANT: Robert L. Klopp, Pro Se
New Haven, Connecticut

Appeal from the United States District Court for the District of Connecticut.

These causes came on to be heard on the transcript of records from the United States District Court for the District of

Connecticut (Chatigny, J., (96-6118) and Covello, J., (96-6148)), and were submitted.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgments of the district courts are hereby AFFIRMED.

Robert L. Klopp filed two complaints in district court against the United States of America, the Administrative Office of the United States Courts and various employees of the clerk's offices of the United States District Court for the District of Connecticut, the United States Court of Appeals for the second Circuit and the United States Supreme Court. Klopp alleged claims under the Federal Tort Claims Act, 28 U.S.C. § 1346 et seq. ("FTCA"), and Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics, 403 U.S. 388 (1971), asserting that the defendants negligently conducted ministerial acts and improperly handled and processed his civil case, Klopp v. Avco Lycoming Textron, No. 91-cv-454 (EBB) and Klopp v. City of New Haven, No. 94-cv-173 (AHN).

The defendants moved to dismiss the complaints under Fed.R.Civ.P. 12(b)(1) and 12 (b)(6) on the grounds that 10 they are entitled to absolute quasi-judicial immunity or qualified immunity with regard to the alleded due process violations; and 2) the claims under the FTCA are either time barred or fail to state a claim upon which relief can be granted. The district court granted both motions and dismissed Klopp's complaints. In the first case, No. 97-6118, the district court ruled that the defendants were entitled to qualified immunity as to the Bivens claims and that the FTCA claims against the district court were time-barred and that the remaining claims did not adequately allege the elements of a viable negligence claim. In the second case, No. 97-6148, the court ruled that the Bivens claims were barred by absolute and qualified immunity and that Klopp failed to state a claim under the FTCA because he did not state a cause of action for which a private person would be liable under Connecticut law, and did not allege the violation of any duty which was the cause of any injury to him. By endorsement order, the district court denied Klopp's motions to amend the judgment, which reargued the merits of his claims.

On appeal, Klopp argues that 1) the court abused its discretion by denying his motions to amend the judgments by endorsement order without explanation; 2) the district court's decisions contain "error of fact and law"; 3) the court's denial of several motions by endorsement order violated his due process rights; 4) the defendants' attorney engaged in a "false defense" and committed ethical violations; and 5) the "delays and denials" of the federal employee defendants warrant the imposition of sanctions against them for "malicious abuse of process."

The district court correctly dismissed Klopp's Bivens claims. This court has held that court clerk are absolutely immune from claims arising from their failure to properly manage the court calendar and more quickly bring an appeal to fruition. Rodriguez v. Weprin, 116 F.3d 62, 66 (2nd Cir. 1997)(finding court's inherent power to control its docket is part of itsfunction of resolving disputes between parties" and is therefore "a function for which judges and their supporting staff are afforded absolute immunity."). Here, Klopp' claims involving the failure of the court to immediately enter judgment, the denial of his motion ofr default judgment, the delay in the processing of his cases, the maintenance of his record, the "problems" with the transmission of the record to this court, the amendments to the caption on his appeal are barred by absoluteimmunity. These claims, like those in Rodriguez, involve matters integral to resolving disputes between parties and managing the dockets of the district court and this court.

In any event, none of Klopp's allegations state a claim under Bivens. Bivens permits federal courts to award damages for constitutional infringements by federal officials. Bivens, 403 U.S. at 392, 397. Klopp's complaints do not suggest a constitutional infringement. First, Klopp's alleagations reflect properly conducted court proceedings, not a denial of court access. Second, Klopp's claims of negligence cannot support a due process claim under Bivens. The Supreme Court has held that the negligent deprivation of life, liberty or property, even if occassioned under color od state law, cannot form the basis for a § 1983 claim and that

the protections of the Due process Clause, whether procedural or substantive, are not triggered by lack of due care. Daniels v. Williams, 474 U.S. 327, 330-36 (1986).

The district court also properly dismissed Klopp's FTCA claims. Under 28 U.S,C. § 1346(b)(1), FTCA claims must allege an "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government." Moreover, the FTCA only applies in "circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the [tortious] act or omission occurred." 28 U.S.C. § 1346(b)(1); see 28 U.S.C. § 2674 (United States liable "in the same manner and to the same extent as a private individual under like circumstances"); Chen v. United States, 854 F.2nd 622, 626 (2nd Cir. 1988). As this court has explained, "for liability to arise under the FTCA, a plaintiff's cause of action must be 'comparable' to a 'cause of action against a private citizen' recognized in the jurisdiction where the tort occurred." Chen, 854 F.2nd at 626 (quoting C.P. Chemical v. United States, 810 F.2nd 34, 37 (2nd Cir.1987). Further, "his allegations, taken as true, must satisfy the necessary elements of that comparable cause of action." Id.

In the first case, No.97-6118, the district court properly concluded that Klopp did not state a cognizable tort claim under the FTCA. Klopp's claims against the district court defendants regarding his case filed in 1991 and dismissed in October 1993 pertain to events that occurred at least two years prior to November 20, 1995, the earliest date he could have filed his administrative complaint. These claims are thus outside the limitations period for FTCA claims and the court lacked subject matter jurisdiction over them. See 28 U.S.C. § 2401(b). Further, Klopp's claim regarding the "problems" with the district court's transmission of his record to this court, as well as his claim regarding this court's sending copies of some of his filings to the defendants, fail to state a cause of action as he has not alleged an injury. Finally, his claim regarding the Supreme Court clerk fails to state a cause of action as it is devoid of any allegations of negligence.

In the second case, No. 97-6148, the district court correctly found that Klopp didi not meet the "private analog" requirement of the FTCA. All of Klopp's claims arise from alleged negligent violations of the ministerial duties of federal court clerks. In addressing the FTCA's private analog requirement we have stated that, "[t]he alleged federal violations also must contitute violations of duties 'analogous to those imposed under local law'" and "consequently 'as to certain governmental functions, the United States cannot be liable, for no private analog exists,'" Chen, 854 F.2nd at 626 (citations omitted). Since a private person cannot engage in a federal court clerk's duties, a private person cannot be liable for the violation of such duties. See id. (no FTCA claim because violation of federal procurement reglations was "action of the type that private persons could not engage in and hence could not be liable for under local law"). Finally, Klopp did not state a cause of action under Connecticut tort law because he did not show that he was injured by the defendants' alleged negligence.

Because the district court properly dismissed these two actions, there is no need for this court to consider Klopp's remaining arguments. And, given the meritlessness of Klopp's claims, he has no way demonstrated that the appellees' actions warrant the imposition of sanctions.

For the reasons set forth above, the judgments of the district court are hereby **AFFIRMED.**

FOR THE COURT,

/s/

GEORGE LANGE III, Clerk
By:Lucille Carr, Deputy Clerk.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| ROBERT L. KLOPP<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, KEVIN F. ROWE, PATRICIA A. ZIELINSKI, GEORGE LANGE III, CAROLYN CLARK CAMPBELL, "KB", CYNTHIA NELSON, and WILLIAM SUTER,<br><br>Defendants. | : | CASE NO.<br>3:96CV593 (RNC) |

RULING ON MOTION TO DISMISS

Plaintiff brings this suit against the United States under the Federal Tort Claims Act, 28 U.S.C. § 1346 et seq., ("FTCA"), alleging negligence on the part of personnel of the Office of the Clerk of this court, the Office of the Clerk of the Second Circuit, and the Office of the Clerk of the Supreme Court of the united States. The complaint also includes Bivens[1] claims against individual members of those offices. Plaintiff claims that the defendants' alleged negligence violated his right of access to the courts under the Due Process clause of the Fourteenth Amendment and under article first, § 10, of the Connecticut constitution.[2]

---

1 In Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), the Supreme Court recognized a private cause of action for violation of an individual's constitutional rights by a federal official.

2 Plaintiff has also named the Administrative Office of the U.S. Court ("AO)" as a defendant. His claim againsty the AO is properly dismissed because the FTCA only authorizes

Defendants have moved to dismiss the action on the grounds that: (1) the individual defendants are entitled to either absolute quasijudicial immunity or qualified immunity with regard to the alleged due process violations; and (2) the claims under the FTCA are either time-barred or fail to state a claim upon which relief may be granted. For the reasons stated below, the motion to dismiss [doc.#13] is granted.

Background

Plaintiff's allegations of negligence relate to the handling of the case entitled Klopp v. Avco Lycoming Textron, No. 3:91CV454 (EBB), which started in this court in 1991, and subsequently went to the Second Circuit and Supreme Court. Specifically, plaintiff alleges the following:

1. The Clerk of this court lost certain exhibits plaintiff filed in conjunction with the complaint and, as a result, those exhibits were not available to the court when it granted defendants' motion to dismiss in December 1991.

2. Though defendants' motion to dismiss was granted in December 1991, the Clerk did not enter judgment until October 1993, thereby preventing plaintiff from pursuing an appeal until the later date.

3. The district court clerk's office was responsible for unspecified "problems" with the record on plaintiff's appeal to the Second Circuit. Those problems were eventually resolved, however, and plaintiff makes no specific allegations of damage relating to the transmittal of the record from the district court to the Second Circuit.

4. Following the Second Circuit's dismissal of plaintiff's first appeal, plaintiff filed a motion to amend the judgment, which was denied by a member of the Clerk's Office signing for Carolyn Clark Campbell, Chief Deputy Clerk.

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suit against the United States, not individual agencies, see Clark v. United States, 481 F.Supp.1086 (S.D.N.Y.), appeal dismissed, 624 F.2d 3 (2d Cir.1979); a Bivens action cannot be maintained against an agency, Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 484-86 (1994); and plaintiff has made no specific allegations of wrongdoing against the AO.

Plaintiff contends that only a panel of judges could rule on his motion to amend the judgment.

5. Cynthia Nelson, a deputy clerk in the Second Circuit Clerk's Office, sent copies of some of plaintiff's filings to the defendants without also sending copies to him.

6. There were several confusing and/or incorrect docketing entries for documents filed with the Second Circuit clerk's office, which resulted in plaintiff's second appeal being "incorrectly and illegally dismissed."

7. The Clerk of the Supreme Court returned plaintiff's petition for certiorari, requesting certain corrections, which were completed and the petition was then docketed. Plaintiff identifies no other actions taken by the Supreme Court clerk's office, but asserts that his petition for certiorari and his request for rehearing were both denied.

Plaintiff contends that these alleged acts of negligence support an FTCA action against the united States, as well as Bivens claims against the individual defendants for violations of his constitutional right of access to the courts. Defendants contend that the Bivens claims are barred by abasolute quasi-judicial immunity and/or qualified immunity and that the allegations under the FTCA are either time-barred or fail to state a claim for negligence.

Bivens Claims

It is well settled that actions taken by court clerks in the exercise of their discretion or performed at the direction of judges or pursuant to a court order are protected by absolute quasi-judicial immunity. See Boyer v. County of Washington, 971 F.2d 100, 102 (8th Cir.1992); Kincaid v. Vail, 969 F2d 594, 600-01 (7th Cir.1992); see also Hill v. City of New York, 45 F.3d 653, 660 (2d Cir.1995). Some courts have extended this absolute immunity to encompass purely ministerial actions as well, see, e.g., Mullis v. United States Bankruptcy Court, 828 F.2d 1385, 1390 (9th Cir.1987); however, the general rule is that such actions are entitled to only qualified immunity. See, e.g., Woodard v. Mennella, 861 F.Supp. 192 (E.D.N.Y.1994), aff'd, 100 F.3d 943 (2d Cir.1996).

Plaintiff cites no authority, and none has been found, for this proposition that a clerk's negligence in handling a court file violates due process. As a general matter, negligence is insufficient to trigger the protections of the due process clause. See Daniels v. Williams, 474 U.S. 327, 328 (1986). Accordingly, defendants are entitled to qualified immunity with regard to all the Bivens claims and those claims are dismissed.

FTCA Claims

Turning to plaintiff's claims under the FTCA, none of them adequately alleges the elements of a viable negligence claim. The first two claims concern events that occurred more than two years before the filing of plaintiff's administrative complaint. Accordingly those claims are barred by the FTCA statute of limitations. See 28 U.S.C. § 2401(b).

In claims three and five, plaintiff fails to allege any harm resulting from the alleged acts of negligence. Accordingly, those claims do not state a cause of action.

The fourth claim, concerning the dismissal of plaintiff's motion to amend the judgment, involves a discretionary act by the clerk's office, which is not actionable under the FTCA. See 28 U.S.C. § 2680(a).

The sixth claim also fails to state a claim for negligence. Plaintiff apparently believes that because certain of his filings were misdated, the Second Circuit panel that dismissed his second appeal did not have all his filings. However, according to plaintiff's complaint and supporting documentation, all his filings were dated prior to the dismissal. There is no reason to believe that any documents were unavailable to the judges at the time of their decision. Even construing the complaint liberally, as I must for this pro se litigant, and even drawing all reasonable inferences in his favor, plaintiff's allegations that the second Circuit panel did not have the benefit of all his filings is insufficient to support a negligence claim.

Finally, plaintiff's allegations regarding the Clerk of the Supreme Court simply fail to allege any act of negligence and therefore fail to state a claim upon which relief can be granted.

Conclusion

Defendants' motion to dismiss the complaint is hereby granted.

So ordered.

Dated t Hartford, Connecticut this 27th day of March 1997.

/s/
Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

| | | |
|---|---|---|
| ROBERT L. KLOPP,<br>Plaintiff, | : | |
| v. | : | |
| U.S.A.; ADMINISTRATIVE OFFICE OF THE U.S COURTS, AS AGENCY, with KEVIN F. ROWE, Clerk, U.S. District Court, Connecticut; with Alice F. Mentz, Deputy Clerk, Cassandra Warren, Deputy Clerk and D. Watts, Bridgeport, Connecticut; George Lange III, Clerk, U.S. Court of Appeals for the 2nd Circuit with Cynthia Nelson, Deputy Clerk, and Samuel McLamore, Case Manager,<br>Defendants | : | Civil No.<br>3:96CV00643 (AVC) |

**RULING ON THE DEFENDANTS' MOTION TO DISMISS**

This is an action for damages alleging violations of the plaintiff's constirutional rights incident to the alleged mishandling of the various civil complaints by the court clerks for both the district court and the second circuit. It is brought pursuant to the Federal Torts Claims Act, 28 U.S.C. § 1346 et seq. ("FTCA"), constitutional tort claims brought directly under the Constitution for violation of his Fifth Amendment rights,[1] and common law tenets concerning negligence.

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1 In Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), the Supreme Court recognized an implied private cause of action regarding a violation of an individual's Fourth Amendment rights and held that an individual could bring an action directly under the Constitution to recover damages. See, Tarpley v. Greene, 684 F.2d 1, 3 n.2 (D.C.Cir.1982). The Supreme Court has allowed Bivens actions against government officials for

The defendant U.S.A. has filed the within motion to dismiss pursuant to Rule 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure as against all them for lack of subject matter jurisdiction, and failure to state a claim upon which relief can be granted. The issue presented is whether the complaint states a cause of action. For the reasons that hereafter follow, the motion is granted.

**FACTS**

The complaint and appendix thereto allege the following facts. On February 4, 1994, the district court in Bridgeport, Connecticut granted the plaintiff's motion to proceed in forma pauperia in the matter of Klopp v. City of New Haven, et al, Case No. 394 CV 173 AHN. On May 12, 1994, the plaintiff filed a motion for default against the city of New Haven. On June 7, 1994, Alice Mentz, deputy clerk, for Kevin F. Rowe, clerk, Bridgeport, and initialed by D. Watts, denied the plaintiff's motion for default as moot, the city of New Haven having filed a timely answer.2

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violations of the Due Process Clause of the Fifth Amendment. See, Davis v. Passman, 442 U.S. 228 (1979).

2 On June 13, 1994, the plaintiff filed his response and objected to the clerk's "ruling." The plaintiff sought reconsideration of the clerk's denial of his motion for default and he stated, specifically, as follows:

8. Since the court has not inquired into the amount of damages, or the truth of any averment, or conducted hearings on this matter, Mr.Klopp assumes that the above issue is to be resolved at either a preliminary hearing, or during a trial, if one is necessary.

9. Mr. Klopp further assumes that, with the denial of a default judgment, and with an answer, that the pleadings are closed, with respect to defendant city of New Haven, and will proceed accordingly.

The plaintiff subsequently filed seversal motions addressed to the clerks original denial. The court denied the plaintiff's motions.

On February 6, 1995, the court issued the final ruling regarding this matter and ordered the case closed.

On March 2, 1995, the plaintiff filed a notice of appeal with the United States second circuit. On March 11, 1995, the plaintiff responded to the request for approval of the caption assigned to the case made by Samuel McLamore, case manager for the second circuit. On March 21, 1995, the plaintiff filed a motion to correct the caption. On March 27, 1995, the court docketed the motion to correct the caption. As of April 5, 1995, the docket sheets indicate that the caption had been amended. On April 7, 1995, the defendant, Cynthia Nelson, deputy clerk, second circuit, sent a new caption to the plaintiff. On April 12, 1995, the plaintiff requested that the clerk in the Bridgeport district court correct the file to include missing documents in the index to the record on appeal. On April 17, 1995, Nelson sent another change to the caption to the plaintiff. On April 18, 1995, the second circuit approved the motion to correct the caption. On May 12, 1995, the plaintiff made a request to the second circuit to include the missing documents in the index to the record on appeal.[3] The complaint alleges that neither court corrected the mistakes and that the second circuit never ruled on the issue.

On June 16, 1995, Nelson sent a memo to the plaintiff concerning certain reply briefs, pointing out that the rules required court permission before supplemental reply briefs could be filed. On June 17, 1995, the plaintiff submitted his response, asking the Clerk to "duly enter" the referenced briefs. On July 28, 1995, the court dismissed the plaintiff's appeal, concluding that the "appeal is frivolous, as it lacks an arguable basis in fact or law." On August 4, 1995, the court transmitted to the plaintiff a "mandate," dismissing his appeal, with stamped signature by George Lange III, clerk. On August 22, 1995, the plaintiff went to the second circuit to receive information regarding his case. The complaint alleges that on

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3 The plaintiff stated, in reference to this failure to correct the missing documents, that "[t]his record, however, cannot, now, in its present condition, be used for an appeal to the Supreme Court."

this visit, the plaintiff's "original documents and copies, previously mailed and received by the 2nd circuit, and missing..., were retained by someone in the Circuit Clerks Office, and were not available for the judge, or panel, who dismissed the case." On September 21, 1995, the second circuit forwarded a package to the plaintiff containing the missing documents, including the previously submitted briefs.

**STANDARD**

The purposeof a motion to dismiss under Rule 12(b)(6) "'is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.' Geisler v. Petrocelli, 616 F.2d 636, 639 (2d Cir.1980)." Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir.1984). In deciding a motion to dismiss, the court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Dismissal is warranted only if, under any set of facts that the plaintiff can prove consistent with the allegations, it is clear that no relief can be granted. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Frasier v. general Elec. Co., 930 F.2d 1004, 1007 (2d Cir.1991).

**DISCUSSION**

With respect to the individual named defendants, these defendants first argu that they are subject to absolute immunity. Specifically, the defendants argue that when court clerks perform quasi-judicial functions, they are entitled to the same absolute immunity afforded a judge. See Mullis v. United States Bankr. Ct., 828 F.2d 1385, 1390 (9th Cir. 1987); see also Oliva v. Heller, 839 F.2d 37, 39-40 (2d Cir. 1988) (indicating that court clerks have been granted immunity where they were performing discretionary acts of a judicial nature) (citations omitted).

The plaintiff responds that the court clerks are not entitled to absolute immunity. Specifically, the plaintiff argues that according to McCray v. Maryland, 456 F.2d 1 (4th

Cir.1972), "the clerk has no discretion that merits insulation by a grant of absolute immunity; the act is mandatory."

There is "'general agreement that court officials...who act at the behest of a judge pursuant to a court order are entitled to absolute quasi-judicial immunity from suit as to those actions.'" Kincaid v. Vail, 969 F.2d 594, 601 (7th Cir. 1992) (citations omitted) (alterations in original); see also McCray, 456 F.2d at 5 (stating that a defense is afforded all public officers who act pursuant to a court order or under the court's discretion). Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, denial of a motion for default as moot, based upon the filing of an answer by the opposing party, is a discretionary act within the authority of the clerk.[4] Pursuant to Rule 12(a),[5] 28(c)[6] of the Federal Rules of Appellate Procedure, the filing of amendments to the caption page of an appeal at the request of the parties,[7] or advising a party that a motion to file a supplemental reply brief was required, are authorized discretionary acts by the clerk's office.[8]

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4 Rule 55(a) reads:

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.
Fed. R. Civ. P. 55(a).

5 Rule 12(a) states that:

(a) Docketing the Appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3(d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title.
Fed. R. App. P. 12(a).

Based upon the foregoing, the court concludes that the denial of a motion for default as moot, the filing of amendments to the caption page of an appeal, and a request that a motion to file a supplemental reply brief, constitute discretionary acts by the court clerks and are therefore entitled to absolute immunity.[9] The policy behind the doctrine of official immunity is based upon the rationale that the threat of liability might deter the official from effectively performing his

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[6] Rule 28(c) states that:

> (c) Reply Brief. The appellate may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of the court. All reply briefs shall contain a table of contents, with page references and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited. Fed. R. App. P. 28(c).

[7] The appendix to the complaint indicates that the "defendants" were changed to "defendants-appellees." Changes of this sort are within the scope of duty of the clerks. See Fed. R. App. P. 12(a).

[8] The appendix to the complaint indicates that a reply brief has already been filed on June 7, 1995. Thus, the plaintiff would have been required to file a motion for any supplemental reply briefs. See Fed. R. App. P. 28(c).

[9] It is not clear from the complaint or from the appendix to the complaint what issues the plaintiff is referring to when he states that "other issues attributed to the clerk and other federal court employees, Bridgeport, are given in points 5, 7 and 8., p.3, Administrative Complaint, Appendix to this Complaint.. .." Hence, the court does not address these issues.

governmental functions. See Henriksen v. Bentley, 644 F.2d 852, 855 (10th Cir.1981).

With respect to the complaint's alleged constitutional violations, the defendant first claims that qualified immunity bars the plaintiff's Bivens claims against the individual defendants. Specifically, the defendant asserts that even if the court should find that the clerks are not entitled to absolute immunity, courts have held that when clerks perform ministerial functions they are entitled to asserr qualified immunity. See Henriksen, 644 F.2d at 855-56; see also Le Grand v. Evan, 702 F.2d 415, 418 (2d Cir.1983)(noting that many courts have accorded clerks a qualified immunity from liability arising from ministerial acts)(citations omitted).

The plaintiff responds that the defendant is not entitled to qualified immunity. Specifically, he argues that without the "element of discretion involved, government officials need not and cannot be deemed to have any 'qualified immunity.'" In addition, the wrongful acts committed by the court clerks violated his constitutional right of access to the courts. See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971) (holding that a violation of a constitutional right could be enforced through a private right of action).

Under the qualified immunity standard adopted by the Supreme Court in Harlow v. Fitzgerald, 467 U.S. 800 (1982), an official is immune if he acted in an "objectively reasonable manner." Malley v. Briggs, 475 U.S. 335, 341 (1986). To be immune from suit, the official's conduct must not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow, 457 U.S. at 818. If the plaintiff's rights were not clearly established at the time of the claimed violation and a reasonable person could have failed to appreciate that his conduct would thus violate those rights, then the official is immune from suit. See Mitchell v. Forsyth, 472 U.S. 511, 535 (1985). The fact that the district court rendered a final judgment on the dismissal of the complaint, and the second circuit dismissed the appeal as frivolous, shows that, as a matter of law, the defendants did not violate any clearly established statutory or constitutional

right. See Cameron v. Fogarty, 806 F.2d 380, 387-88 (2d Cir. 1986) (stating that the fact that a court rendered a conviction is evidence of the good faith and reasonableness in the lawfulness of the arrest).

"Negligent conduct simply does not give rise to a constitutional claim for violation of the Due Process Clause under Bivens." Lee X v. Casey, 771 F.Supp. 725, 732 (E.D.Va. 1991). See also Daniels v. Williams, 474 U.S. 327 (1986)(concluding that the Due Process Clause is not implicated by the negligent act of an official). The plaintiff acknowledges the fact that "a plaintiff must show intentional, deliberate, or arbitrary misconduct, that, then rises to a level of a constitutional deprivation, to state a claim for violation of due process right." The doctrine of qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S.. 335, 341 (1986). In the case at bar, the plaintiff has not shown that the acts of the clerk were done intentionally. A mere allegation of a conspiracy indicating a deprivation of civil rights is insufficient to withstand a motion to dismiss. See Gutierrez v. Vergari, 499 F.Supp. 1040, 1047 (S.D.N.Y. 1980).

In sum, even ministerial duties of the court clerks are protected by qualified immunity. Thus, the clerk's actions or inaction in preparation of the index to the record on appeal are as as a matter of law, at best, simple negligence that can not serve as a cause of action based on constitutional deprivation. Also, the individual defendants could not have reasonably believed that their actions were in violation of the plaintiff's right of access to the courts.

With respect to the government itself and the claims made against it, the government argues that the plaintiff fails to state a claim under the FTCA.[10] Specifically, the defendant argues that the complaint fails to state a cause of action

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10 The defendant also argues that the FTCA bars any action against the individual defendants for any common law tort claims. However, as the court has dismissed the claims on the basis of immunity, the court does not address this issue.

cognizable against a private person and that the complaint fails to state a cause of action for negligence. The plaintiff responds that the "[t]ort of [n]egligence is cognizable under Connecticut law and under the FTCA." In addition, he asserts that he has met the burden of proving the elements of negligence.

The FTCA indicates that the liability of the government is limited to:

> the neglect or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346 (b); see also Chen v. United States, 854 F.2d 622, 626 (2d Cir. 1988)(indicating that the plaintiff's cause of action must be comparable to a state cause of action against a private person and must satisfy its elements); C.P. Chem Co. v. United States, 810 F.2d 34, 37-38 (2d Cir. 1987) (stating that the United States cannot be held liable in situations wgere no private analog exists). Having earlier determined that the defendants are not liable because of the various immunity doctrines that are applicable, it is evident that a private person could not be held liable under these circumstances. Pursuant to the FTCA, the claim against the United States[11] fails because there is no comparable circumstances where a private person would be liable for the performance of these functions.

As to the negligence claim, Edwards v. Grace Hosp. Soc'y, 130 Conn. 568, 572, 36 A.2d 273 (1944), indicates that the plaintiff has the burden of proving that the United States owed him a duty and that the violation of that duty was the

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11 Although the Administrative Office of the U.S. Courts is named in the caption, the defendants section of the complaint does not name the office. Based on the plaintiff's statement, the court concludes that any claims against the Administrative Office have been withdrawn.

proximate cause of the plaintiff's injury. The complaint here fails to allege the violation of any such duty which was the proximate cause of the plaintiff's injuries. the claims of mishandling were remedied or were of no impact in deciding the matter on appeal, At the district court level, the court denied the complaint as moot upon the filing of an answer by the defendants in the case. The second circuit concluded that the matter was "frivolous, as it lack[ed] an arguable basis in fact or law." The complaint therefore fails to state a compensable injury which resulted from any of the acts concerning the mishandling of the underlying civil matter by the court clerks,

In sum, the FTCA limits the liability of the government to circumstances where a private person would also be liable. In this case, any individual performing these functions is not liable because of the doctrine of qualified immunity. In addition, the acts of the government, through its employees, were not the proximate cause of the plaintiff's alleged injuries. The district court properly denied the complaint as moot because an answer had been filed by the defendants. The other claims of mishandling had no impact on the official act of the second circuit judges in dismissing the case as frivolous.

**CONCLUSION**

Based on all the foregoing, the defendant's motion to dismiss (document no.10) is granted. SO ORDERED this 12th day of February, 1997 at Hartford, Connecticut.

/s/
Alford v. Covello
United States District Judge

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
Washington D.C. 20544
February 13, 1996

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Robert L. Klopp
P.O.Box 599
New Haven, Connecticut 06503-0599

Re: Administrative Tort Claim
Dear Mr. Klopp:

This will serve as formal notification that the Director of the Administrative Office has denied in full your tort claim arising from the disposition of your litigation by the District of Connecticut and the Second Circuit. This letter refers to the claim in the amount of $1,271,881.18, received on November 27, 1995.

To the extent the injuries alleged in this claim arise from the performance of judicial duties by the circuit and district judges handling the case, the claim may not be settled under authority of the Federal Tort Claims Act. The United States may assert judicial immunity from liability, when that immunity would be available to the officer or employee whose conduct gives rise to the claim. 28 U.S.C. § 2674.

To the extent you allege injury from the performance of official duties by the clerk of the court, the United States may assert any judicial immunity that the clerk enjoys, In addition, you have not established any negligence on the part of a clerk that would give rise to tort liability under 28 U.S.C. § 2672.

I am required by regulations of the Department of Justice to advise you that, if you are dissatisfied with this agency's disposition of your claim, you have the right to file suit in an appropriate United States district court within six months of the date of mailing of this notification.

Sincerely, _____/s/_____
John L. Chastin
Assistant General Counsel

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
Washington D.C. 20544
April 3, 1996

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Robert L. Klopp
P.O.Box 599
New Haven, Connecticut 06503-0599

Dear Mr. Klopp:

This is in response to your letter of February 24, 1996, asking whether this agency had issued a formal denial of your first administrative tort claim, the one dated October 25, 1995.

The letter of January 26, 1996, that you received by certified mail on January 31 is a formal denial of your claim dated October 25, 1995, as prescribed by the regulations of the Department of Justice appearing at 28 C.F.R.. § 14.9(a).

I originally intended to take no action on your second claim, dated November 20, 1995, which duplicated the first in every respect except the dollar amount of your demand: however, in light of the confusion you expressed in your last inquiry as to the scope of the denial, I sent a separate formal denial of the second claim. In the event you submit more repetitive claims, our office will return them without action.

I hope this explanation is helpful.

Sincerely, _____/s/_____
John L. Chastin
Assistant
General Counsel

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 3rd day of February, one thousand nine hundred and ninty-eight,

Present:

Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

CIRCUIT JUDGES,

97-6118

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KLOPP,

Plaintiff-Appellant,

v.

USA,

Defendants-Appellees.

---

A petition for rehearing having been filed herein by Robert L. Klopp,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED.**

GEORGE LANGE III, Clerk

By:_____/s/_____
Beth J. Meador,
Administrative Attorney

pethrg_frm

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 3rd day of February, one thousand nine hundred and ninty-eight,

Present:

Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

CIRCUIT JUDGES,

97-6148

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KLOPP,

Plaintiff-Appellant,

v.

USA,

Defendants-Appellees.

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A petition for rehearing having been filed herein by Robert L. Klopp,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED.**

GEORGE LANGE III, Clerk

By: /s/
Beth J. Meador,
Administrative Attorney

pethrg_frm

# MANDATE

96-cv-593

UNITED STATES COURT OF APPEALS CTDC
FOR THE SECOND CIRCUIT Chatigny
96-cv-643
CTDC
Covello

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT NAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of December, one thousand nine hundred and ninty-seven.

Present: Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

Circuit Judges

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ROBERT L. KLOPP,
Plaintiff-Appellant,

V. Nos. 97-6118
97-6148

UNITED STATES OF AMERICA, ET.AL.,
Defendants-Appellees.

---

APPEARING FOR APPELLEES: Thomas V. Daily
Assistant United States Att.
U.S. Atty's Office for the
District of Connecticut

APPEARING FOR APPELLANT: Robert L. Klopp, Pro Se
New Haven,
ConnecticutAppeal from the United States District Court for the District of Connecticut.

**ISSUED AS MANDATE: 2/17/98 N.G.**

/s/

# MANDATE

96-cv-593

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CTDC
Chatigny
96-cv-643
CTDC
Covello

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT NAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of December, one thousand nine hundred and ninty-seven.

Present: Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

Circuit Judges

---

ROBERT L. KLOPP,

Plaintiff-Appellant,

V.

Nos. 97-6118
97-6148

UNITED STATES OF AMERICA, ET.AL.,

Defendants-Appellees.

---

APPEARING FOR APPELLEES: Thomas V. Daily
Assistant United States Att.
U.S. Atty's Office for the
District of Connecticut

APPEARING FOR APPELLANT: Robert L. Klopp, Pro Se
New Haven, Connecticut

Appeal from the United States District Court for the District of Connecticut.

**ISSUED AS MANDATE: 2/17/98 N.G.**

/s/

A-27 INDIV PROSE
SUBMTD DISPSD
CT0601
Q02 2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET TRANSACTIONS

Proceedings include all events.

97-6118 Klopp v. USA, et al

5/16/97 Copy of distrcit court docket entries and notice of appeal on behalf of Appellant Robert L. Klopp filed. [97-6118] (pr23)

5/16/97 Note: This appeal was PRO SE when filed. (pr23)

5/16/97 NOTE: See cases 95-7205, 94-7704, 93-9162 (pr23)

5/16/97 Record on appeal filed. (Original papers of district court.) Number of volumes: 1 (pr23)

5/16/97 Copy of district court Judgment, filed. March 27, 1997 (pr23)

5/27/97 Appellant Robert L. Klopp Form C RECEIVED, with proof of service. [97-6118] (ps24)

5/27/97 Notice of appearance form on behalf of Robert L. Klopp, Esq., received. (Orig. to Calendar) (in04)

5/27/97 Copies of judgments, orders & Endorsements from Appellant Robert L. Klopp received. (ps24)

5/30/97 Notice of Appeal Acknowledgment Letter from Robert L. Klopp for Appellant Robert L. Klopp received. (ps24)

6/ 4/97 Notice of Appeal Acknowledgment Letter from Thomas V. Daily for Appellee William R. Suter, Appellee Cynthia Nelson, Appellee Carolyn Clark Campbell, Appellee George Lange, Appellee Patricia A. Zielinski, Appellee Kevin F. Rowe, Appellee Administrative Off, Appellee USA received. (pr23)

6/ 6/97 Scheduling order #1 filed. Appellant's brief and appendix due on 7/ 7/97. Appellee's brief due on 8/ 6/97. (pr23)

6/10/97 Appellant Robert L. Klopp brief FILED with proof of service. (ps29)

Docket as of February 10, 1998 2:16 pm

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|---|---|
| 6/10/97 | Appellant Robert L. Klopp appendix filed w/pfs. Number of volumes: 10. (ps29) |
| 6/11/97 | Notice of appearance form on behalf of Robert L. Klopp, Esq., received. (Orig. to Calendar) (in04) |
| 7/11/97 | Notice of appearance form on behalf of Thomas V. Daily, Esq., received. (Orig. to Calendar) (in04) |
| 7/31/97 | Appellee USA, Appellee Administrative Off, Appellee Kevin F. Rowe, Appellee Patricia A. Zielinski, Appellee George Lange, Appellee Carolyn Clark Campbell, Appellee Cynthia Nelson, Appellee William R. Suter MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due. (ps29) |
| 8/11/97 | Appellant Robert L. Klopp reply brief filed with proof of service. (ps29) |
| 8/22/97 | Letter dated August 20, 1997, from the U.S. Department of Justice, Assistant United States Attorney Thomas V. Daily, who states "the defendants-appellants in the captioned matter hereby with draw their request for oral argument and rest on their memorandum brief files July 30, 1997", received. (ps29) |
| 10/22/97 | Proposed for argument the week of 12/8/97. (ca93) |
| 10/30/97 | Set for argument on 12/12/97 . [97-6118] (ca93) |
| 12/12/97 | Case submitted before ALTIMARI*, WALKER, CABRANES, C.JJ., Please note: FXA was not present during today's oral arguments. He will listen to the oral argument tapes.(TAPE No.:---) (ca91) |
| 12/17/97 | Judgment filed; judgment of the district court is AFFIRMED by detailed order of the court without opinion filed. (JMW) (ps30) |
| 12/16/97 | Appellant Robert L. Klopp Petition for rehearing [1113332-1] with proof of service filed. (1135) |
| 2/ 3/98 | Order FILED DENYING petition for REHEARING [1113332-1] by Appellant Robert L. Klopp, endorsed on motion dated 12/26/97. (ps34) |

A-29 INDIV PROSE
SUBMTD DISPSD
C70646
Q02 2

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
DOCKET TRANSACTIONS

Proceedings include all events.
97-6148 Klopp v. USA, et al

| | |
|---|---|
| 5/27/97 | Notice of appearance form on behalf of Robert L. Klopp, Esq., received. (Orig. to Calendar) (in04) |
| 6/ 9/97 | Note: This appeal was PRO SE when filed. (pr25) |
| 6/ 9/97 | Copy of district court docket entries and notice of appeal on behalf of Appellant Robert L. Klopp filed. [97-6148] (pr25) |
| 6/ 9/97 | SEE: 97-6118 (pr25) |
| 6/ 9/97 | Appellant Robert L. Klopp Form C filed, with proof of service. [97-6148] (pr25) |
| 6/ 9/97 | Copy of U.S. District Court Judgment dated 2/12/97 filed. (pr25) |
| 6/ 9/97 | Copy of U.S. District Court Ruling on the defendant's motion to dismiss dated 2/10/97 filed (pr25) |
| 6/ 9/97 | Copy of U.S. District Court memo-endorsed order dated 5/13/97 filed. (pr25) |
| 6/ 9/97 | Copy of U.S. District Court memo-endorsed order dated 2/10/97 filed. (pr25) |
| 6/ 9/97 | Copy of U.S. District Court memo-endorsed order dated 2/10/97 filed. (pr25) |
| 6/ 9/97 | Copy of U.S. District Court memo-endorsed order dated 8/2/96 filed. (pr25) |
| 6/ 9/97 | Copy of U.S. District Court memo-endorsed order dated 7/25/96 filed. (pr25) |
| 6/ 9/97 | Record on appeal filed. (Original papers of district court.) (pr25) |
| 6/10/97 | Letter sent to Appellant Robert L. Klopp, Appellee USA, Appellee Administrative Off, Appellee Kevin F. Rowe, Appellee Alice F. Mentz, Appellee |

Docket as of February 10, 1998 2:17 pm

Proceedings include all events.
97-6148 Klopp v. USA, et al

Cassandra Warren, Appellee D. Watts, Appellee George Lange, Appellee Cynthia Nelson, Appellee Samuel McLamore: informing parties of that the record on appeal has been filed with this court.(pr25)

6/16/97 Scheduling order #1 filed. Appellant's brief and appendix due on 7/16/97. Appellee's brief due on 8/18/97,, .

6/16/97 Notice sent to all parties scheduling order #1 filed June 16, 1997. (ps29)

6/16/97 Notice of Appeal Acknowledgment Latter from Robert L. Klopp for Appellant Robert L. Klopp received. (ps24)

6/16/97 Notice of Appeal Acknowledgment Letter from Thomas V. Daily for Appellee Samuel McLamore, Appellee Cynthia Nelson, Appellee George Lange, Appellee D. Watts, Appellee Cassandra Warren, Appellee Alice F. Mentz, Appellee Kevin F. Rowe, Appellee Administrative Off, Appellee USA received. (ps24)

6/19/97 Appellant Robert L. Klopp brief FILED with proof of service. (ps29)

6/19/97 Appellant Robert L. Klopp appendix filed w/pfs. Number of volumes: 10. (ps29)

7/11/97 Notice of appearance form on behalf of Thomas V. Daily, Esq., received. (Orig. to Calendar) (in04)

8/19/97 Appellee USA, Appellee Administrative Off, Appellee Kevin F. Rowe, Appellee Alice F. Mentz, Appellee Cassandra Warren, Appellee D. Watts, Appellee George Lange, Appellee Cynthia Nelson, Appellee Samuel McLamore MEMORANDUM BRIEF filed with proof of service. Satisfy appellee's brief due. (ps29)

Docket as of February 10, 1998 2:17 pm

A-31 INDIV PROSE
SUBMTD DISPSD
C70646
Q02 2

Proceedings include all events.
97-6148 Klopp v. USA, et al

| | |
|---|---|
| 8/22/97 | Letter dated August 20, 1997 from the U.S. Department of Justice, Thomas V. Daily the Assistant United States Attorney, who states that "the defendants-appellants in the captioned matter hereby withdraw their request for oral argument, and rest on their memorandum brief filed on August 18, 1997,", received. (ps29) |
| 8/25/97 | Appellant Robert L. Klopp reply brief filed with proof of service. Stored on shelf #58, 18th floor. (ps29) |
| 12/ 2/97 | Set for argument on 12/12/97. [97-6148] (ca91) |
| 12/10/97 | 1 supplemental record on appeal received. Volumes: 1. (ps33) |
| 12/12/97 | Case submitted before ALTIMARI*, WALKER, CABRANES, C.JJ., Please note: FXA was not present during today's oral arguments. He will listen to the oral argument tapes.(TAPE No.: ---) (ca91) |
| 12/26/97 | Appellant Robert L. Klopp Petition for rehearing [1113315-1] with proof of service filed. (1135) |
| 2/ 3/98 | Order FILED DENYING petition for REHEARING [1113315-1] by Appellant Robert L. Klopp, endorsed on motion dated 12/26/97. BJM (ps34) |

_____/s/_____

Docket as of February 10, 1998 2:17 pm

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
DOCKET TRANSACTIONS

Proceedings include all events. WIG APPEAL
3:96cv593 Klopp v. USA, et al CLOSED

| | | |
|---|---|---|
| 3/28/96 | 1 | Motion by Robert L. Klopp to proceed in Forma Pauperis (paz)[Entry date 04/11/96] |
| 4/ 2/96 | – | Endorsement granting [1-1] mtion to Proceed in Forma Pauperis (signed by Mag.Judge Donna F. Martinez)(paz)[Entry date 04/11/96] |
| 4/ 2/96 | | Complaint with Appendix to Complaint filed. (paz) [Entry date 04/11/96] |
| 4/ 2/96 | – | SUMMONS(ES) issued for USA, Administrative, Kevin F. Rowe, Patricia A. Zielinski, George Lange III, Caroyln Clark Campbell, Cynthia Nelson, William R. Suter. USM 285 forms [Entry date 04/11/96] |
| 4/ 2/96 | 3 | ORDER on Pretrial Deadlines handed to counsel. Discovery cutoff 10/2/96 ; Dispositive Motions due 11/1/96 Amended Pleadings due 6/3/96 Motions to Dismiss due 7/2/96 (paz) [Entry date 04/11/96] |
| 4/10/96 | 4 | Return of Service on Summons/Complaint by Kevin F. Rowe, Patricia A. Zielinski (emb) [Entry date 04/12/96] |
| 4/19/96 | 5 | MARSHAL'S return of service on complaint, summons, ipf executed as to Cynthia Nelson on 4/15/96 I/O (bpd) [Entry date 04/29/96] |
| 4/19/96 | 6 | MARSHAL'S return of service on complaint, summons, ipf executed as to Carolyn Clark Campbell on 4/15/96 I/O (bpd) [Entry date 04/29/96] |
| 4/19/96 | 7 | MARSHAL'S return of service on complaint, summons, ipf executed as to William R. Suter on 4/15/96 I/O (bpd) [Entry date 04/29/96] |
| 4/19/96 | 8 | MARSHAL'S return of service on complaint, |

summons, ipf executed as to George Lange III on 4/15/96 I/O (bpd) [Entry date 04/29/96]

4/19/96 9 MARSHAL'S return of service on complaint, Summons/Complaint executed as to William R. Suter on 4/15/96 (emb) [Entry date 05/09/96]

5/10/96 10 MARSHAL'S return of service on Summons/ Complaint executed as to Administrative Office on 4/29/96 (emb) [Entry date 05/13/96]

5/17/96 12 MARSHAL'S return of service on Summons/ Complaint executed as toGeorge Lange III, Carolyn Clark Campbell, Cynthia Nelson on 4/25/96 (emb) [Entry date 05/21/96]

5/21/96 11 MARSHAL'S return of service on Summons/ Complaint executed as to USA on 5/15/96 (emb) [Entry date 05/13/96]

6/10/96 13 MOTION by USA, Administrative Ofc, Kevin F. Rowe, Patricia A. Zielinski, George Lange III, Carolyn Clark Campbell, Cynthia Nelson, William R. Suter to Dismiss, or in the alternative For Summary Judgment (Brief Due 7/1/96)(bpd) [Entry date 06/11/96]

6/10/96 14 APPEARANCE of Attorney for USA, Administrative Ofc, Kevin F. Rowe, Patricia A. Zielinski, George Lange III, Carolyn Clark Campbell, Cynthia Nelson, William R. Suter - - Thomas V. Daily (bpd) [Entry date 06/11/96]

6/10/96 15 MEMORANDUM by USA, Administrative Ofc, Kevin F. Rowe, Patricia A. Zielinski, George Lange III, Carolyn Clark Campbell, Cynthia Nelson, William R. Suter-Thomas V. Daily (bpd) [Entry date 06/11/96]

6/21/96 16 MOTION by Robert L. Klopp to Strike [15-1] support memorandum by defendants (Brief due 7/12/96)(jrb)

6/21/96 17 MEMORANDUM by Robert L. Klopp in opposition to [13-1] motion to Dismiss by defendants (jrb)

Docket as of May 21, 1997, 4:22 pm

6/24/96 -- ENDORSEMENT denying [16-1] motion to Strike [15-1] support memorandum by defendants (signed by Judge Robert N. Chatigny) (jrb)

6/27/96 18 MOTION by Robert L. Klopp for Leave to File corrected motion to strike and corrected response in opposition to motion to dismiss (jrb)

7/ 1/96 -- ENDORSEMENT granting [18-1] motion for Leave to File corrected motion to strike and Corrected response in opposition to motion to Dismiss (signed by Judge Robert N. Chatigny) (jrb)

7/ 1/96 19 Corrected MOTION by Robert L. Klopp to Strike [15-1] suppost memorandum by defendants (Brief due 7/22/96) referring to: [16-1] motion to Strike [15-1] support memorandum by defendants by Robert L. Klopp (jrb)

7/ 1/96 20 Corrected MEMORANDUM by Robert L. Klopp in opposition to [13-1] motion to Dismiss by defendants (jrb)

7/16/96 21 MOTION by Robert L. Klopp to Correct Motion to Strike & Memorandum In Opposition to Defendant USA's Motion to Dismiss (bpd) [Entry date 07/17/96]

7/18/96 22 Notice of & MOTION by Robert L. Klopp for Hearing on Motion To Dismiss [13-1], or Motion For Summary Judgment [13-2] (Brief Due 8/8/96 (bpd)

7/18/96 23 MEMORANDUM by Robert L. Klopp in support of [22-1] motion for Hearing on Motion To Dismiss [13-1], or Motion for Summary Judgment [13-2] (bpd)

7/18/96 24 ORDER referring: [22-1] motion for Hearing on Motion To Dismiss [13-1], or Motion for Summary Judgment [13-2] , [21-1] motion to Correct Motion to Strike & Memorandum In Opposition to Defendant USA's Motion to

Dismiss, [19-1] supplemental amended motion To Strike [15-1] support memorandum by defendants, [13-1] motion to Dismiss, [13-2] motion for Summary Judgment referred to Maj. Judge Holly B. Fitzsimmons (signed by Judge Robert N. Chatigny) (jrb) [Entry date 07/19/96]

7/25/96 25 Defendant's REPORT of Parties Planning Meeting (bpd)

7/30/96 27 ORDER of referral to Mag, Judge Holly B. Fitzsimmons for the purpose of entry of scheduling order (signed by Judge Robert N. Chatigny)(bpd) [Entry date 08/ 1/96]

7/31/96 26 ORDER re courtesy copies: copies of all filings should be forwarded to chambers (Signed by Mag. Judge Holly B. Fitzsimmons) (dmw)

12/ 4/96 28 ORDER referring [22-1] motion for Hearing on Motion To Dismiss [13-1] or Motion for Summary Judgment [13-2] , [21-1] motion to Correct Motion to Strike & Memorandum in Opposition to Defendant USA's Motion to Dismiss, [19-1] supplemental amended motion To Strike [15-1] support memorandum by defendants, [13-1] motion to Dismiss & [13-2] motion for Summary Judgment referred to Maj. Judge William I. Garfinkel (signed by Clerk)(blw)

12/ 9/96 29 MOTION by Robert L. Klopp for Clarification of [28-1] referral order (brief Due 12/30/96) (cai) [Entry date 12/10/96]

12/10/96 - - ENDORSEMENT denying [19-1] supplemental amended motion to Strike [15-1] support memo by defendants (signed by Mag. Judge William I. Garfinkel)(dmw) [Edit date 12/10/96]

12/10/96 - - ENDORSEMENT granting [21-1] motion to Correc Motion to Strike & Memorandum In Opposition to Defendant USA's Motion to Dismiss (Doc.19 replaces document no.16, Document no.20 replaces number 17)(signed by

| | | |
|---|---|---|
| | | Mag. Judge William I. Garfinkel) Fitzsimmons)(dmw) [Edit date 12/10/96] |
| 12/10/96 | - - | ENDORSEMENT denying [22-1] motion for Hearing on Motion To Dismiss [13-1], or Motion For Summary Judgment [13-2] (signed by Mag. Judge William I. Garfinkel) (Dmw) [Edit date 12/10/96] |
| 12/11/96 | - - | ENDORSEMENT granting [29-1] motion for Clarification of [28-1] referral order SEE ENDORSEMENT ( signed by Judge Robert N. Chatigny) (bpd) [Entry date 12/13/96] |
| 12/20/96 | 30 | MOTION by Robert L. Klopp for Judgment on the Pleadings (Brief due 1/10/97) (jrb) |
| 12/20/96 | 31 | MEMORANDUM by Robert L. Klopp in support of [30-1] motion for Judgment on the Pleadings (jrb) |
| 12/20/96 | 32 | MEMORANDUM by USA, Administrative Ofc, Kevin F. Rowe, Patricia A. Zielinski, George Lange III, Carolyn Clark Campbell, Cynthia Nelson, William R. Suter in opposition to [30-1] motion for Judgment on the Pleadings by Robert L. Klopp (jrb) |
| 1/ 3/97 | - - | ENDORSEMENT denying [30-1] motion for Judgment on the Pleadings (signed by Judge Robert N. Chatigny) (bpd) |
| 3/12/97 | 33 | MOTION by Robert L. Klopp for Clarification of correspondence from Attorney Daily to Magistrate Judge Garfinkle on 3/7/97, and To Receive a copy of Ruling of Judge Covello on 3:96cv643 (bpd) |
| 3/27/97 | 34 | RULING granting [13-1] Motion to Dismiss (signed by Judge Robert N. Chatigny) |
| 3/27/97 | 35 | JUDGMENT for William R. Suter, Cynthia Nelson, Carolyn Clark Campbell, George Lange III, Patricia A. Zielinski, Kevin F. Rowe, Administrative Ofc, USA against Robert L. Klopp (signed by Clerk) (bpd) |

Docket as of May 21, 1997, 4:22 pm

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|---|---|---|
| 3/27/97 | -- | Case closed (bpd) |
| 4/ 4/97 | 36 | MOTION by Robert I. Klopp to Amend [34-1] order (Brief Due 4/25/97) (cai) |
| 4/ 4/97 | 37 | MEMORANDUM by Robert L. Klopp in support of [36-1] motion to Amend [34-1] order (cai) |
| 5/ 5/97 | -- | ENDORSEMENT denying [36-1] motion to Amend [34-1] (signed by Judge Robert J. Chatigny) (bpd) |
| 5/ 7/97 | 38 | NOTICE OF APPEAL [35-1] judgment order, [0-0] order by Robert L. Klopp Certified Copy of Appeal and Docket mailed to USCA (cam) |
| 5/ 9/97 | -- | Record on Appeal Mailed to USCA: [38-1] appeal by Robert L. Klopp (cam) |
| 5/12/97 | 39 | REVISED NOTICE OF APPEAL of [35-1] judgment order by Robert L. Klopp including FILING FEE $ 105.00 RECEIPT # 164455 Certified Copy of Appeal and Docket mailed to USCA (cam) [Entry date 5/14/97] |

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
DOCKET TRANSACTIONS

Proceedings include all events. PROSE APPEAL
3:96cv643 Klopp v. USA, et al CLOSED

| | | |
|---|---|---|
| 4/10/96 | 1 | Motion by Robert L. Klopp to proceed in Forma Pauperis (paz) [Entry date 04/22/96] |
| 4/11/96 | - - | Endorsement granting [1-1] mtion to Proceed in Forma Pauperis (signed by Mag.Judge Donna F. Martinez) (paz) [Entry date 04/22/96] |
| 4/11/96 | 2 | Complaint filed. (paz) [Entry date 04/22/96] |
| 4/11/96 | 3 | ORDER on Pretrial Deadlines handed to counsel. Discovery cutoff 10/1196 ; Dispositive Motions due 11/10/96 Amended Pleadings due 6/11/96 Motions to Dismiss due 7/1196 (paz) [Entry date 04/22/96] |
| 4/11/96 | 4 | PRETRIAL ORDER filed. (signed by Judge Alfred V. Covello) (paz) [Entry date 04/22/96] |
| 5/ 2/96 | 5 | MARSHAL'S return of service on Summons/ Complaint executed as to USA, Administrative Office, Kevin F. Rowe, Cassandra Warren, D.Watts on 4/22/96 (emb) [Entry date 05/09/96] |
| 5/ 2/96 | 6 | MARSHAL'S return of service on Summons/ Complaint executed as to Alice F. Mentz on 4/23/96 (emb) [Entry date 05/09/96] |
| 5/ 2/96 | 7 | MARSHAL'S return of service on Summons/ Complaint executed as to George Lange III, Cynthia Nelson, Samuel McLamore on 4/23/96 (emb) [Entry date 05/09/96] |
| 5/ 2/96 | 8 | MARSHAL'S return of service on Summons/ Complaint executed as to George Lange III, Cynthia Nelson, Samuel McLamore on 4/26/96 (emb) [Entry date 05/09/96] |
| 6/21/96 | 9 | APPEARANCE of Attorney for USA, Administrative Ofc. Kevin F. Rowe, Alice F. Mentz, Cassandra Warren, D. Watts, George |

Lange III, Cynthia Nelson, Samuel McLamore -- Thomas V. Daily [Entry date 06/24/96]

6/21/96 10 MOTION by USA, Administrative Ofc, Kevin F. Rowe, Alice F. Mentz, Cassandra Warren, D. Watts, George lange III, Cynthia Nelson, Samuel McLamore to Dismiss, or, in the alternateive, for Summary Judgment (Brief due 7/12/96) (jrb) [Entry date 06/24/96]

6/21/96 11 MEMORANDUM by USA, Administrative Ofc, Kevin F. Rowe, Alice F. Mentz, Cassandra Warren, D. Watts, George Lange III, Cynthia Nelson, Samuel McLamore in support of [10-1] motion to Dismiss, [10-2] motion for Summary Judgment (jrb) [Entry date 06/24/96]

7/ 1/96 12 MOTION by Robert L. Klopp to Strike portions of [11-1] support memorandum by defendants (Brief Due 7/22/96) (jrb)

7/ 1/96 13 MEMORANDUM by Robert L. Klopp in opposition to [10-1] motion to Dismiss by defendants (jrb)

7/18/96 14 Notice of & MOTION by Robert L, Klopp for Hearing on Motion to Dismiss [10-1] or, For Summary Judgment [10-2] (Brief Due 8/8/96 (bpd)

7/18/96 15 MEMORANDUM by Robert L. Klopp in support of [14-1] motion for Hearing on Motion to Dismiss [10-1] or, For Summary Judgment [10-2] (bpd)

7/25/96 16 Defendant's REPORT of Parties Planning Meeting (bpd)

7/25/96 -- ENDORSEMENT denying [14-1] motion for Hearing on Motion to Dismiss [10-1] or, For Summary Judgment [10-2] (signed by Judge Alfred V. Covello) (bpd)

8/ 1/96 17 MOTION by Robert L. Klopp Assignment of Case for Trial (bpd)

8/ 2/96 -- ENDORSEMENT denying [17-1] motion

Docket as of June 3, 1997 2:28 pm

Assignment of Case for Trial (signed by Judge Alfred V. Covello) (jrb)

12/20/96 18 MOTION by Robert L. Klopp for Judgment on the Pleadings (Brief Due 1/10/97) (jrb)

12/20/96 19 MEMORANDUM by Robert L. Klopp in support of [18-1] motion for Judgment on the Pleadings (jrb)

12/20/96 20 MEMORANDUM by USA, Administrative Ofc, Kevin F. Rowe, Alice F. Mentz, Cassandra Warren, D. Watts, George Lange III, Cynthia Nelson, Samuel McLamore in opposition to [18-1] motion for Judgment on the Pleadings by Robert L. Klopp (jrb)

- 2/10/97 - - ENDORSEMENT denying [12-1] motion to Strike portions of [11-1] support memorandum by defendants (signed by Judge Alfred V. Covello) (bpd) [Entry date 02/11/97]

2/10/97 - - ENDORSEMENT denying as moot [18-1] motion for Judgment on the Pleadings (signed by Judge Alfred V. Covello) (bpd) [Entry date 02/11/97]

2/10/97 21 RULING granting [10-1] motion to Dismiss (signed by Judge Alfred V. Covello) (bpd) [Entry date 02/11/97]

2/12/97 22 JUDGMENT for Samuel McLamore, Cynthia Nelson, George Lange III, D. Watts, Cassandra Warren, Alice F. Mentz, Kevin F. Rowe, Administrative Ofc, USA against Robert L. Klopp (signed by Clerk) (bpd) [Entry date 02/13/97]

2/12/97 - - Case closed (bpd) [Entry date 02/13/97]

2/21/97 23 MOTION by Robert L. Klopp for Reconsideration of [21-1] order dated 2/10/97 re: [10-1] motion to Dismiss, [10-2] motion for Summary Judgment (Brief Due 3/14/97) (jrb)

2/21/97 24 MEMORANDUM by Robert L. Klopp in support of [23-1] Motion for Reconsideration of [21-1] order dated 2/10/97 re:[10-1] motion to Dismiss [10-2] motion for Summary Judgment (jrb)

Docket as of June 3, 1997 2:28 pm

5/13/97 -- ENDORSEMENT granting [23-1] motion for Reconsidereation of [21-1] order dated 2/10/97 re: [10-1] motion to Dismiss, [10-2] Motion for Summary Judgment. Relief requested is denied. (signed by Judge Alfred V. Covello) (bpd) [Entry date 05/14/97]

5/29/97 25 NOTICE OF APPEAL of [0-0] order, [22-1] judgment order, [21-1] order by Robert L. Klopp FILING FEE $ 105.00 RECEIPT # 164627 certified copy to USCA (cam) [Entry date 06/ 2/97]

/s/

# MANDATE

96-cv-593 CTDC Chatigny
96-cv-643 CTDC Covello

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT NAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of December, one thousand nine hundred and ninty-seven.

Present: Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

Circuit Judges

---

ROBERT L. KLOPP,

Plaintiff-Appellant,

V. Nos. 97-6118
97-6148

UNITED STATES OF AMERICA, ET.AL.,

Defendants-Appellees.

---

APPEARING FOR APPELLEES: Thomas V. Daily
Assistant United States Att.
U.S. Atty's Office for the
District of Connecticut

APPEARING FOR APPELLANT: Robert L. Klopp, Pro Se
New Haven, Connecticut

**ISSUED AS MANDATE: 2/17/98 N.G.**

**/S/**

A-43

# MANDATE

96-cv-593
CTDC
Chatigny

96-cv-643
CTDC
Covello

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT NAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 17th day of December, one thousand nine hundred and ninty-seven.

Present: Hon. Frank X. Altimari,
Hon. John M. Walker, Jr.
Hon. Jose´ A. Cabranes,

Circuit Judges

---

ROBERT L. KLOPP,

Plaintiff-Appellant,

V.

Nos. 97-6118
97-6148

UNITED STATES OF AMERICA, ET.AL.,

Defendants-Appellees.

---

APPEARING FOR APPELLEES: Thomas V. Daily
Assistant United States Att.
U.S. Atty's Office for the
District of Connecticut

APPEARING FOR APPELLANT: Robert L. Klopp, Pro Se
New Haven, Connecticut

Appeal from the United States District Court for the District of Connecticut.

**ISSUED AS MANDATE: 2/17/98 N.G.**

/s/

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
DOCKET TRANSACTIONS

Proceedings include all events. WIG
3:96cv593 Klopp v. USA, et al CLOSED

| | | |
|---|---|---|
| 5/23/97 | 40 | ACKNOWLEDGED receipt of Record on Appeal at USCA on 5/16/97 received re: appeal by Robert L. Klopp, [38-1] appeal by Robert L. Klopp USCA Number 97-6118 (cam) [Entry date 05/28/97] |
| 12/3/97 | -- | FIRST SUPPLEMENTAL Record on Appeal mailed to USCA, regarding [39-1] appeal by Robert L. Klopp, [38-1] appeal by Robert L. Klopp (cam) |
| 2/23/98 | 42 | MANDATE OF USCA (certified copy) dated 2/17/97 affirming decision of District Court re: [39-1] appeal (George Lange III) (cam) [Entry date 02/25/98] |
| 2/24/98 | 41 | MANDATE OF USCA (certified copy) dated 2/17/98 affirming decision of District Court re: [38-1] appeal (George Lange III) (cam) |

/s/

To: F.B.I.
150 COURT STREET
NEW HAVEN, CT 06510

March 9, 1998

From: Robert L. Klopp
P.O.Box 599
New Haven, CT 06503-0599

Re: Formal Complaint.

This serves as a formal complaint against those individual employees of the U.S. District Court, Hartford and the U.S. 2nd Circuit Court of Appeals, New York, as given below, and their superiors, that have either, through neglect, or non-performance, either inadvertently, or purposely, individually, or, jointly, caused Mr. Klopp's civil cases, referenced below, to be dismissed, thereby causing further delay and additional costs to be incurred by Mr. Klopp in the pursuit of his cases under law.

Case no. 97-6118, Klopp v. U.S., in the U.S. Court of Appeals for the Second Circuit, was erroneously dismissed after Denial of Mr. Klopp's Petition for Rehearing, by a "Beth J. Meador, Administrative Attorney", on Feb.3, 1998. (See copy attached of the Certified copy, as Exhibit "A", obtained from the Clerk's Office at the 2nd Circuit.) This "Denial" is not from the COURT!

The SUMMARY ORDER, this complaint, issued on Dec 17, 1997, signed by Lucille Carr, Deputy Clerk, for the court, was not by the COURT, and NOT based on the RECORD. Ms. Carr had no right to "DISMISS" this case. (See copy attached of certified copy of this SUMMARY ORDER, as obtained from the Second Circuit Clerk's Office.)

The case below was for similar examples of "NEGLECT" as given in the original Complaint, case no. 396 CV 593 RNC, after Mr. Klopp filed an Administrative Complaint with the Administrative Office of the U.S. Courts, and subsequently filed this Federal Tort Claim against those individuals below, and including those now involved here, as part of the on-going continued deprivation of Mr. Klopp's

Constitutionally protected rights of access to the courts, right of petition, and right of due process by a fair and impartial tribunal of competent jurisdiction.

Taken from p.8, Complaint, Case no. 396 CV 593 RNC, is the following that applies, again, noW:

"The specific instances of negligence by defendant federal court employees, given below, forms a continuing course of tortious conduct throughout the court proceedings below. The duty of each of those defendants involved, continued, under law, and under oath, ...continues.... See Hamilton v. Smith, 773 F.2nd 461 (1985), at 467, for discussion and additional Connecticut cases on "continuing negligence" and "fradulent concealment."

See 34 ALR4th 1186, at 1191, where "once the clerk of court has undertaken the duty (and dockets the case), he may be held to a standard of reasonable care in its performance."

See 28 USC 951. Oath of Office of Clerks and Deputies, applicable to all employees under the control of the Administrative Office of the U.S. Courts, as (had been) given in attached Exhibit #15, p.110, Appendix to Complaint."

The Court was informed of the above in the Petition for Rehearing. There is no longer any chance for "simple neglect". (See Exhibit "D", attached.)

Other examples from the Second Circuit include erroneous entries on the court's docket, as found on copy attached, this complaint, and as referenced in memos to Clerk on February 11, 1998, and February 26, 1998. (See copies of these memos attached, as Exhibits "E" and "F".)

The final "MANDATE" issued by the Clerk's Office at the 2nd Circuit on 2/17/1998, is also questionable. See Hartford District Court's intrepretation of the two copies they received and logged in on their electronic docket on 2/25/1998, attached as Exhibit G". Then see copies of the Mandates received from the Hartford Clerk's Office, also attached, this memo, as Exhibits "H" and "I".

There have been previous errors made throughout the proceedings below that point to a continuing cause of action

in this case as well. See copy of memo from Ralph Vega, Jr., Deputy Clerk, June 10, 1997, attached, this complaint, Exhibit "J", as another example. In the accompanying case 97-6148, there is also the question of "Fraud on the Court".

Mr. Klopp will attempt to submit both this case, and the accompanying case, 97-6148, Klopp v. U.S., under Writ of Certiorari to the U.S. Supreme Court, and will incurr the $600.00 filing fee plus the copy costs and delays associated, to pursue this matter, under law, within my capabilities, under the same continuing jurisdiction given in the cases thus far, including those additional charges added herein.

In the meanwhile, and, without delay, the following charges may also apply. Mr. Klopp asks for these matters to be investigated and will supply or documentation in support of these claims, as well as being a witness in prosecutinng those at fault.

The charges may also include the following as quoted from Title 18 USC 1514, that covers obstruction of justice:

A. subsection (c), p.214, U.S.C.A., 18 U.S.C. 1514, gives these:

(1)the term "harassment" means a course of conduct directed at a specific person that-

(A)causes substantial emotional distress in such person; and

(B)serves no legitimate purpose; and

(2)the term "course of conduct" means a series of acts over a period of time, however short, indicating a continuity of purpose.

As used in sections 1512 and 1513 of this title and in this section-

(3)the term "misleading conduct" means-

(A) knowingly making a false statement;

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement;

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered, or otherwise lacking in authenticity;

The following are also given, from U.S. v. Hubbard, 16 F.3d 694 (6th.Cir.1994), and come under Title 18 USC 1001, MAKING FALSE STATEMENTS IN A MATTER WITHIN THE JURISDICTION OF THE FEDERAL GOVERNMENT, at 698, (7), where Section 1001 provides:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowlingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitous or fraudulent statement or entry, shall be fined not more than $10,000 or imprisioned not more than five years, or both."

Mr. Klopp reiterates that since the U.S. is a defendant in both of these cases, those individuals within the court system, itself, cannot claim immunity, and that the U.S. must inforce its own rules. Those involved have no judicial immunity. These individuals all work for the Administrative Office of the U.S. Courts, not for the Judiciary, and their job duties and responsibilities are clearly defined and limited by law.

In McCray v. State of Maryland, 456 F.2nd 1 (1972), as in the cases involved, "in respect to filing papers, the clerk has no discretion that merits insulation by a grant of absolute immunity; the act is mandatory. Md.Ann.Code, Art.17 section 1 (1957). His duty, although associated with the court system, is not quasi-judicial (meaning entailing a discretion similar to that of a judge). CLERICAL DUTIES ARE GENERALLY CLASSIFIED AS MINISTREAL. 2 HARPER & JAMES, THE LAW OF TORTS, 1644 (1956), and the act of filing papers with the court is as ministreal and inflexibly

mandatory as of any of the clerk's responsibilities."

at 5, "If the clerk has a defense that he was acting pursuant to his lawful authority or following an order of the court, that defense must be raised and established before the complaint can properly be dismissed or judgment entered for the defendant."

Those involved were, again, given a chance to correct errors and supply necessary documentation to substantiate their claims. They have not. The only possibiiity is that they were "acting" outside of their authority, making mere "negligence" improbable.

Negligence alone is not actionable under section 1983. But, a section 1983 action may be based on negligence when it leads to a deprivation of rights. See Jenkins v. Averett, 424 F.2nd 1288 (4th.Cir.1970); Carter v. Carlson, supra; Whirl v. Kern, supra.

If plaintiff's allegations are true, it is clear that his constitutionally based right of access to courts has been violated. See Boddie v. Connecticut, 401 U.S. 371, 376; Chambers v. Baltimore & Ohio Railroad Co., 207 U.S. 142 (1907); Ginsberg v. Stern, 125 F.Supp. 596, 601. Cf. California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).

With my clearly defined constitutional rights of access to the courts, the right to petition, the right to be heard by a court of competent jurisdiction, and the right of due process being, once again, violated, causing me continued damage and delay, I must, again, protest and put this matter on the record, along with my previous complaints to your office, as "unfinished business" that must be addressed.

This is to certify, under penalty of perjury, that the above complaint is true and correct as stated above.

Sincerely,_____/s/_____

Robert L. Klopp (pro se)
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**Rule 47. Rules of a court of Appeals**

**(a) Local Rules**

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to a party or a lawyer regarding practice before a court shall be in a local rule rather than an internal operating procedure or standing order. A local rule shall be consistent with-but not duplicative of-Acts of Congress and rules adopted under 28 U.S.C. § 2072 and shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States. The clerk of each court of appeals shall send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

**(b) Procedure When There Is No Controlling Law.-** A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit.. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violation has been furnished in the particular case with actual notice of the requirement. (as amended Apr.27, 1995, eff.Dec.1, 1995.)

**LOCAL RULE 0.23, F.R.A.P., SECOND CIRCUIT**

**§ 0.23. Diposition in Open Court or by Summary Order**

The demand of an expanding case load require the court to be ever conscious of the need to utilize judicial time effectively. Accordingly, in those cases in which decisionn is unanimous and each judge of the panel believes that no jurisprudential purpose would be served by a written opinion, disposition will be made in open court or by summary order.

Where a decision is rendered from the bench, the court may deliver a brief oral statement, the record of which is available upon request and payment of the transcription charges. Where disposition is by summary order, the court may append a brief written statement to that order. Since these statements do not constitute formal opinions of the court and are unreported or not uniformly available to all parties, they shall not be cited or otherwise used in unrelated cases before this or any other court.

**PROCEDURE** **28 U.S.C. § 2072**

**§ 2072. Rules of procedure and evidence; power to proscribe**

(a) The Supreme Court shall have the power to proscribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrates thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

(c) Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title. (Added Nov. 19, 1988, P.L. 100-702, title IV, § 401(a), 102 Stat.4648; Dec.1, 1990, P.L. 101-650, Title III, § 315, 104 Stat.5115.)

**JUDICIARY & JUDICIAL PROCEDURE** **28 USC § 2106.**

**§ 2106. Determination.**

The Supreme Court or any other court of appellate jurisdiction may affirm. modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances. (June 25, 1948, ch 646, § 1, 62 Stat.963.)